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No. 8, Original

In the Supreme Court of the United States

STATE OF ARIZONA, COMPLAINANT

v.

STATE OF CALIFORNIA, ET AL.

ON EXCEPTIONS TO THE REPORT OF THE SPECIAL MASTER

EXCEPTION OF THE UNITED STATES AND BRIEF FOR THE UNITED STATES IN SUPPORT OF EXCEPTION

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EXCEPTION OF THE UNITED STATES

The United States excepts to the Special Master's recommendation that a 1983 judgment of the United States Claims Court, approving the settlement of an action brought against the United States by the Quechan Indian Tribe of the Fort Yuma Reservation, precludes the United States and the Tribe from claiming a reserved water right, in this original action, for 25,000 acres of land that the United States and the Quechan Tribe assert are part of the Tribe's Reservation.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General

DECEMBER 1999

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BRIEF FOR THE UNITED STATES IN SUPPORT OF EXCEPTION

STATEMENT

The proceedings that are the subject of the Special Master's Report are a sequel to this Court's decisions in *Arizona* v. *California*, 373 U.S. 546 (1963) (*Arizona I*), and *Arizona* v. *California*, 460 U.S. 605 (1983) (*Arizona II*), which address the rights of the Colorado River Basin States and other entities to the use of the waters of the Colorado River. On October 10, 1989, this Court granted the motion of Arizona and California to reopen this original action to resolve questions of water rights arising out of disputed boundary claims with respect to the Fort Yuma, Fort Mojave, and Colorado River Indian Reservations. See *Arizona* v. *California*, 493 U.S. 886 (1989). The United States, the Metropolitan Water District of Southern California, and the

Coachella Valley Water District, as well as Arizona and California and the three Indian Tribes that occupy those reservations, are parties in this litigation.

The Special Master, Frank J. McGarr, has conducted proceedings and prepared a recommendation resolving the disputed boundary issues. The Master has recommended that the Court reject the claims of the United States and the Quechan Tribe for the Fort Yuma Reservation on the ground that they are precluded by prior litigation between the Tribe and the United States. McGarr Report 6-8, 12. He has also recommended that the Court approve the parties' proposed settlement of the claims respecting the Fort Mojave and Colorado River Indian Reservations. *Id.* at 8-12, 12-14. We briefly describe the history of the litigation and the Master's recommendations in the case. We then turn to the United States' exception to the Master's report, which is limited to his recommendation that the Claims Court's 1983 judgment, approving a settlement of an action brought by the Quechan Tribe against the United States under the Indian Claims Commission Act, precludes the United States and the Quechan Tribe from seeking a determination of water rights for lands that the United States and the Tribe both submit are part of the Tribe's Reservation.

A. The History Of The *Arizona* v. *California* Litigation

In 1952, the State of Arizona initiated this original action against the State of California and its public agencies to confirm Arizona's entitlement to the use of water in the Colorado River Basin and to limit California's consumption of that water. See *Arizona I*, 373 U.S. 546 (1963); see also *Arizona II*, 460 U.S. 605, 608-613 (1983) (describing the history of the litigation). The States of Nevada, Utah, and New Mexico became

parties to the suit, by intervention or joinder, and the United States intervened on behalf of various federal establishments that are entitled, under federal law, to use the Colorado River's waters. See *Arizona II*, 460 U.S. at 608-609. Those establishments include five Indian reservations: (1) the Colorado River Indian Reservation; (2) the Fort Mojave Indian Reservation; (3) the Fort Yuma (Quechan) Indian Reservation; (4) the Chemehuevi Indian Reservation; and (5) the Cocopah Indian Reservation. *Id.* at 609.

The Court appointed a Special Master, Simon Rifkind, who conducted extensive proceedings and recommended a division of the Colorado River's waters. The Court issued a detailed decision that largely adopted the Master's recommendations, see *Arizona I*, 373 U.S. 546 (1963), and the Court later embodied its judgment in a judicial decree, 376 U.S. 340 (1964) (the 1964 Decree). The Court recognized that the Colorado River Compact, set out at 70 Cong. Rec. 324 (1928), provided for a division of water between the Upper Basin States (Colorado, Wyoming, Utah and New Mexico) and the Lower Basin States (Arizona, Nevada, and California). See 373 U.S. at 557-558. But the Compact did not provide for a further subdivision of water among the three Lower Basin States. *Ibid.*

The Court ultimately concluded that the Boulder Canyon Project Act, ch. 42, 45 Stat. 1057 (1928), which authorized the construction of the All-American Canal and other Colorado River diversion works, accomplished that subdivision. Under that Act, the first 7,500,000 acre-feet of mainstream waters each year are allocated in the amount of 4,400,000 acre-feet to California, 2,800,000 acre-feet to Arizona, and 300,000 acre-feet to Nevada. California and Arizona are each entitled to one-half of any surplus in excess of 7,500,000 acre-feet,

and each State is entitled to full use of the tributaries within its borders. See *Arizona I*, 373 U.S. at 564-565; see also *Arizona II*, 460 U.S. at 609-610.

The Court also determined that the United States had reserved water rights for the five Indian reservations in accordance with the Court's decision in *Winters* v. *United States*, 207 U.S. 564 (1908). See *Arizona I*, 373 U.S. at 598-600; see also *Arizona II*, 460 U.S. at 609. Under *Winters*, the United States' creation of an Indian reservation to provide an agriculture-based homeland includes a reservation of sufficient water to irrigate those reservation lands that are capable of growing crops. See *Arizona I*, 373 U.S. at 601; see also *Arizona II*, 460 U.S. at 609-610. The Court adopted the Master's findings respecting the amounts of practicably irrigable lands on the various reservations, the corresponding amounts of water that the Tribes were entitled to withdraw from the mainstream of the Colorado River, and the priority dates of those "present perfected rights." *Ibid.* The 1964 Decree specifically recognized the Tribes' federally reserved water rights. See Decree Art. II(D), 376 U.S. at 344-345.

Nevertheless, the Court did not finally resolve all aspects of the water rights for the Indian reservations. The Court disagreed with the Master's decision to determine the disputed boundaries of the Fort Mojave Indian Reservation and the Colorado River Indian Reservation. The Court stated:

> We hold that it is unnecessary to resolve those disputes here. Should a dispute over title arise because of some future refusal by the Secretary to deliver water to either area, the dispute can be settled at that time.

Arizona I, 373 U.S. at 601; see also *Arizona II*, 460 U.S. at 610-611 & n.3. Article II(D) of the 1964 Decree accordingly provided that the entitlement of the United States to water for those two reservations "shall be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined." 376 U.S. at 345.

Between 1969 and 1978, the Secretary of the Interior issued orders determining the boundaries of the Fort Yuma, Fort Mojave, and Colorado River Indian Reservations. See *Arizona II*, 460 U.S. at 631-634. Meanwhile, the parties in the original action moved this Court to revise the 1964 Decree to set out their rights with greater specificity. The five Indian Tribes for whose reservations the United States had claimed reserved water rights in the previous proceedings moved to intervene and make claims for additional water, and the United States later joined the Tribes in seeking additional water. *Id.* at 612. Without resolving those additional issues, the Court entered a Supplemental Decree setting out the "present perfected rights to the use of mainstream water in each State and their priority dates" under the 1964 Decree. *Arizona* v. *California*, 439 U.S. 419, 420 (1979). The Supplemental Decree described the water rights for all five Indian reservations under the 1964 Decree, *id.* at 423, 428, but also noted that the rights for all five reservations "shall continue to be subject to appropriate adjustment by agreement or decree of this Court in the event that the boundaries of the respective reservations are finally determined." *Id.* at 421. The Court denied the Tribes' motions to intervene insofar as they sought to oppose entry of the Supplemental Decree. *Id.* at 437. At the United States' suggestion, the Court otherwise re-

ferred the Tribes' motions to intervene, as well as the further matters raised by the United States and the Tribes, to a Special Master, Senior Judge Elbert P. Tuttle. See *id.* at 436-437; *Arizona II*, 460 U.S. at 611-612.

Master Tuttle issued a preliminary and a final report. See *Arizona II*, 460 U.S. at 612-613. He granted the Tribes leave to intervene, and he determined that the Secretary of the Interior's administrative actions had determined, with finality, the boundaries of the Tribes' reservations for purposes of Article II(D) of the 1964 Decree. 460 U.S. at 613; see also *id.* at 631-634 (describing Secretary's actions). Those "boundary lands" determinations resulted in an enlargement of the reservations, entitling the Tribes to additional water. *Id.* at 613. Master Tuttle also determined that there were additional lands – the so-called "omitted lands"—within the recognized 1964 boundaries that were entitled to water under the practicably irrigable acreage standard. He therefore recommended that the Court reopen the 1964 Decree to award the Tribes additional water rights. The States filed exceptions to those determinations. *Ibid.*

This Court overruled the exceptions in part and sustained them in part. *Arizona II*, 460 U.S. at 613-642. The Court first rejected the States' objection to the Tribes' intervention, concluding that the Tribes were entitled to represent their interests in this case. *Id.* at 613-615. It next examined the States' exception to the Master's recommendation that the 1964 Decree should be reopened to award the Tribes additional water on account of the "omitted lands" that were within the 1964 reservation boundaries, but had not received water rights under the practicably irrigable acreage standard. *Id.* at 615-628. The Court sustained that

exception, ruling that "principles of res judicata advise against reopening the calculation of the amount of practicably irrigable acreage." *Id.* at 626.

The Court also addressed the States' exception to the Master's conclusion that the Secretary of the Interior's determination of the Tribes' reservation boundaries was a "final determination" of those boundaries, entitling the United States (and the Tribes) to additional water commensurate with the actual size of the reservations. *Arizona II*, 460 U.S. at 628-641. The Court ruled that the Secretary's determinations were not, in themselves, final determinations of the boundary disputes, because the States had not had an opportunity to obtain judicial review of the Secretary's decisions. *Id.* at 636-638. The Court noted that California's agencies had initiated a judicial action in federal district court challenging the Secretary's determinations, *Metropolitian Water Dist. of S. Cal.* v. *United States*, Civ. No. 81-0678-GT(M) (S.D. Cal.), and it suggested that that litigation "should go forward, intervention motions, if any are to be made, should be promptly made, and the litigation expeditiously adjudicated." *Arizona II*, 460 U.S. at 638-639.

In remitting the boundary lands dispute to the district court, the Court expressly declined to intimate an opinion "as to the Secretary's power or authority to take the actions that he did or as to the soundness of his determinations on the merits." *Arizona II*, 460 U.S. at 637. Furthermore, the Court noted that the United States had moved to dismiss the district court action on various grounds, including sovereign immunity. *Id.* at 638. The Court stated that "[t]here will be time enough, if any of these grounds for dismissal are sustained and not overturned on appellate review, to determine whether the boundary issues foreclosed by

such action are nevertheless open for litigation in this Court." *Ibid.*[1]

The district court litigation went forward with seven of the parties from the prior proceedings: the United States, the States of Arizona and California, the Metropolitan Water District of Southern California, the Coachella Valley Water District, and the Quechan, Fort Mojave, and Colorado River Indian Tribes. The district court rejected the United States' sovereign immunity defense and, on cross-motions for summary judgment, voided the Secretary's determination of the Fort Mojave Reservation's boundaries. *Metropolitan Water Dist. of S. Cal.* v. *United States*, 628 F. Supp. 1018 (S.D. Cal. 1986). The district court certified its order for interlocutory appeal, pursuant to 28 U.S.C. 1292(b), and the court of appeals remanded the case with directions to dismiss for lack of jurisdiction. *Metropolitan Water Dist. of S. Cal.* v. *United States*, 830 F.2d 139 (9th Cir. 1987), aff'd, 490 U.S. 920 (1989). The court of appeals concluded that the Quiet Title Act, 28 U.S.C. 2409a, which preserves the United States' sovereign immunity from suits challenging the United States' title "to trust or restricted Indian lands," 28 U.S.C. 2409a(a), barred the plaintiffs' suit. 830 F.2d at 143-144. This Court granted a petition for a writ of certiorari to review the court of appeals' judgment and affirmed that judgment

[1] The Court noted that several of the Tribes had obtained an adjudication of some of the boundary lands in dispute through litigation quieting title to individual tracts. See *Arizona II*, 460 U.S. at 633, 636 n.26. The Court also recognized that Congress had directed the Secretary to add federally owned land to the Cocopah Reservation. See *id.* at 633, 636 n.26. The Court concluded that those matters had been finally determined and accepted the Master's determination of the practicably irrigable acreage within those areas. *Id.* at 636, 640-641.

by an equally divided Court. *California* v. *United States*, 490 U.S. 920 (1989).

B. The Current Litigation

Following this Court's decision in *California* v. *United States*, *supra*, the States and their agencies moved this Court to reopen the 1964 Decree in *Arizona* v. *California*. They specifically asked the Court to determine whether the Quechan, Fort Mojave, and Colorado River Indian Reservations are entitled to additional boundary lands and whether the Tribes are entitled to additional water rights that would be associated with such additions. See McGarr Report 4-5. Neither the United States nor the Tribes objected to that course of action, and the Court granted the motion. 493 U.S. 886 (1989).

The Court appointed Professor Robert B. McKay as Special Master to conduct the reopened proceedings. 493 U.S. 971 (1989). Professor McKay died in 1990, and the Court appointed Special Master McGarr to succeed him. 498 U.S. 964 (1990). The Master has issued a series of orders that have culminated in his Report setting out his recommended resolution of these proceedings. The Master has recommended that the Court reject the claims of the United States and the Quechan Tribe respecting the Fort Yuma Reservation. See McGarr Report 6-8, 12. He has also recommended that the Court approve the parties' proposed settlements respecting the Fort Mojave and Colorado River Indian Reservations, finding that those settlements "equitably resolve the water rights disputes in the matter referred to me." *Id.* at 14. See also *id.* at 8-12, 12- 13.

The Master concluded that principles of res judicata preclude the Quechan Tribe from seeking additional water for the boundary lands of the Fort Yuma Res-

ervation. The claim concerning the Fort Yuma Reservation arises out of a dispute over the validity of an 1893 agreement between the United States and the Tribe, which essentially provided that the Tribe would cede a portion of its Reservation lands (including the so-called boundary lands) on the condition that the United States would provide irrigation for other lands within the Reservation. See *Arizona II*, 460 U.S. at 632-633; App., *infra*, 1a-10a (text of 1893 Agreement). The Master rejected the States' contentions that this Court's *Arizona I* and *Arizona II* decisions prevented the Tribe from seeking additional water for the boundary lands. See McGarr Report App. 2(A), at 7. The Master nevertheless concluded that the Tribe could not pursue those claims because of a 1983 judgment of the United States Claims Court, which approved a settlement between the United States and the Tribe respecting those lands. *Id.* at 9-10. See *Quechan Tribe of the Fort Yuma Reservation* v. *United States*, No. 320 (Cl. Ct. Aug. 11, 1983) (final judgment) (*reprinted* at App., *infra*, 66a-67a). The Master appears to have concluded, contrary to the submissions of the United States and the Tribe, that their settlement divested the Tribe of any claim to the boundary lands and the corresponding water rights. McGarr Report 7-8 & App. 2(A), at 9-10. The Master denied a series of motions for reconsideration. See *id.* App. 2(B)-(D).

The Master also determined that the Court should approve the parties' proposed settlement of the dispute respecting the boundaries of the Fort Mojave Reservation. The claim to additional water for that Reservation arises out of a dispute over the accuracy of a survey of the so-called Hay and Wood Reserve portion of the Fort Mojave Indian Reservation. See *Arizona II*, 460 U.S. at 631-632. The parties agreed to settle

that matter through a proposed agreement, the principal provisions of which: (1) specify the boundary of the Reservation in the vicinity of the Hay and Wood Reserve; (2) preserve the claims of the parties respecting title to and jurisdiction over the bed of the last natural course of the Colorado River within the specified boundary; (3) entitle the Tribe to divert the lesser of an additional 3022 acre-feet of water or enough water to supply the needs of 468 acres; (4) preclude the United States and the Tribe from claiming additional water rights from the Colorado River water for lands within the Hay and Wood Reserve; and (5) disclaim any intent to affect any private claims to land or to determine title to or jurisdiction over such land. See McGarr Report 8-9 & App. 3.

The Master likewise determined that the Court should approve the parties' proposed settlement of the dispute respecting the Colorado River Indian Reservation. The claim to additional water for that Reservation arises primarily out of a question whether the Reservation boundary is the ambulatory west bank of the Colorado River or a fixed line representing a past location of the River. See *Arizona II*, 460 U.S. at 631-632. The Master issued an initial order resolving the boundary issue against the Tribe, and the parties thereafter negotiated a proposed settlement of the issue. Under the terms of that settlement, the parties would agree to leave the Reservation boundary unadjudicated in this litigation and would instead recognize that the Tribe is entitled to a fixed amount of water in resolution of the Tribe's underlying water rights claim. That settlement, among its principal terms: (1) awards the Tribes the lesser of an additional 2100 acre-feet of water or enough water to irrigate 315 acres; (2) precludes the Tribe or the United States from seeking additional reserved

water rights from the Colorado River for lands in California; (3) expresses the understanding that the parties will not adjudicate in these proceedings the correct location of the disputed boundary; (4) preserves the competing claims of the parties to title to or jurisdiction over the bed of the Colorado River within the Reservation; (5) provides that the agreement will become effective only if the Master and the Court approve the settlement. See McGarr Report 9-10 & Apps. 4-5. The Master expressed some concern that the settlement does not resolve title to the disputed boundary lands, but he recognized that the settlement does achieve the end aim of this litigation: a final determination of the Tribes' water rights respecting the disputed boundary lands. *Id.* at 10-12, 13- 14.

The Master has submitted a proposed draft of a Supplemental Decree that would carry his decision into effect. McGarr Report App. 6.

SUMMARY OF ARGUMENT

The United States supports the Master's recommendations that the Court approve the settlements respecting the Fort Mojave Indian Reservation and the Colorado River Indian Reservation. The settlements will produce an equitable resolution of two longstanding water rights disputes and will provide all of the interested parties in the Colorado River Basin with greater certainty and stability respecting their entitlement to the use of the Colorado River. The United States excepts, however, to the Master's determination of the water rights claim respecting the Fort Yuma Indian Reservation.

The Master concluded that the Quechan Tribe was precluded from claiming water rights on account of a 1983 settlement, entered as a consent judgment in the

United States Claims Court, between the United States and the Quechan Tribe regarding the boundary lands at issue in this litigation. The Master misapprehended the scope and significance of the Claims Court judgment. The historical record shows that the Tribe brought suit against the United States under the Indian Claims Commission Act challenging an 1893 agreement in which the Tribe purported to cede those lands to the United States. The Tribe argued, among other things, that the 1893 agreement was invalid and failed to divest the Tribe of its lands. The Secretary of the Interior ultimately concluded that the Tribe was correct and entered an administrative decision recognizing the Tribe's entitlement to the boundary lands. The United States and the Quechan Tribe thereafter settled the Tribe's claim for compensation under the Indian Claims Commission Act, and that settlement was entered as a judgment of the Claims Court. Under the terms of the settlement, the United States paid the Tribe $15 million in settlement of the Tribe's claims for compensation for the temporary deprivation of the boundary lands prior to 1978 and the permanent loss of other lands. The parties stipulated that the judgment resolved all of the Tribe's claims against the United States respecting its lands.

The Master concluded that, because the Claims Court settlement resolved all of the Tribe's claims, it must have divested the Tribe of the boundary lands and deprived the Tribe of any claim of water rights to those lands. The Master is clearly mistaken. The United States agreed to settle the Tribe's suit because it recognized that the Tribe owned the boundary lands. The corresponding consent judgment precludes the Tribe from bringing any further claims against the United States respecting the boundary lands, but it

does not preclude either the United States or the Tribe from asserting reserved water rights for those lands in these proceedings. The Claims Court judgment did not decide any question concerning reserved water rights for the boundary lands, and that matter remains to be determined on the merits in these proceedings.

The Master's recommendation regarding the Fort Yuma Reservation has improperly denied the United States and the Tribe their opportunity to adjudicate the merits of the existence of reserved water rights for the boundary lands of that Reservation, has cast a cloud over the Tribe's equitable title to the disputed lands, and has perpetuated an injustice that should be corrected. This Court should sustain the United States' exception and remand the case for further proceedings to determine and quantify the reserved water rights.

ARGUMENT

THE UNITED STATES CLAIMS COURT'S 1983 JUDGMENT DOES NOT PRECLUDE THE UNITED STATES OR THE QUECHAN TRIBE FROM OBTAINING A DETERMINATION OF RESERVED WATER RIGHTS IN THESE PROCEEDINGS

The Master has recommended that the United States and the Quechan Tribe should be precluded from asserting water rights in this litigation because the Tribe entered into a compromise judgment with the United States in the United States Claims Court respecting its ownership of the lands for which it claims those rights. The Master's recommendation is mistaken. The United States and the Quechan Tribe reached a compromise based on their joint understanding, reflected in an order of the Secretary of the Interior, that the lands in question are part of the Tribe's Reservation. The resulting judgment accordingly provides no basis for barring the United States or the Tribe from seeking a judicial determination of reserved water rights for those lands. The Master's error is apparent from the historical record and the documents that set out the basis for the Claims Court's judgment. We therefore begin by tracing the history of the Quechan Tribe's boundary lands claim. We then explain the specific flaws in the Master's reasoning and suggest the appropriate course for proceedings on remand.

A. THE CLAIMS COURT'S JUDGMENT RESTS ON THE JOINT UNDERSTANDING OF THE UNITED STATES AND THE QUECHAN TRIBE THAT THE TRIBE OWNS THE LANDS IN QUESTION

The Claims Court's judgment arose from the Quechan Tribe's longstanding challenge to an 1893 agreement between the United States and the Tribe in which the Tribe ceded a portion of its Reservation to the United States. The Tribe challenged the validity of that agreement through requests for review by the Department of the Interior and through judicial proceedings under the Indian Claims Commission Act of 1946, ch. 959, 60 Stat. 1049, 25 U.S.C. 70 *et seq.* (1976). The Tribe's efforts culminated in a determination by the Secretary of the Interior that the conditions specified in the 1893 agreement for the cession by the Tribe to be effective had not been satisfied by the United States (the Secretarial Order) and a judicial settlement of the Tribe's suit under the Indian Claims Commission Act, which was entered as a final judgment in the Claims Court (the Claims Court judgment). The history of the Tribe's claims and their resolution demonstrates—contrary to the Master's understanding—that the United States and the Tribe reached their compromise on the understanding that the Quechan Tribe

owns the lands in question and that the United States and the Tribe would be entitled to seek water rights for those lands in these proceedings.

1. The 1893 Agreement

On January 9, 1884, President Chester A. Arthur issued an Executive Order (the 1884 Executive Order) creating the Fort Yuma Reservation for the benefit of the Quechan Tribe, whose members were then described as the "Yuma Indians." 1 Charles J. Kappler, *Indian Affairs Laws and Treaties* 832 (1904). The 1884 Executive Order described a tract of land, approximately 72 square miles in size, located along the Colorado River in California. 1 Kappler, *Indian Affairs* at 832. In 1893, the Tribe, which had historically engaged in farming, petitioned the President and Congress to have its lands irrigated, and it offered to cede its rights to a portion of the Fort Yuma Reservation to the United States in exchange for allotments of irrigated land to individual Indians. See S. Exec. Doc. No. 68, 53d Cong., 2d Sess. 14-16 (1894). By the Act of March 3, 1893, Congress authorized the Secretary of the Interior to negotiate with any Indian Tribe for surrender of a portion of its reservation, provided that the agreement would be subject to ratification by Congress. Ch. 209, 27 Stat. 633. In the case of the Quechan Tribe, the Secretary appointed a three-member commission, which met with the male tribal members and, on December 4, 1893, concluded an agreement (the 1893 Agreement). Congress ratified that agreement the following year. See Act of Aug. 15, 1894, ch. 290, § 17, 28 Stat. 332 (the 1894 Act); see App., *infra*, 1a-10a.

Article I of the 1893 Agreement provides in relevant part that the Quechan Tribe, "upon the conditions hereinafter expressed, do hereby surrender and relinquish

to the United States all their right, title, claim, and interest in and to and over the following described tract," 28 Stat. 332-334, which consists of approximately 25,000 acres. Articles II and III provide for the allotment of lands to tribal members (28 Stat. 333), and Articles III and IV address the sale of other lands to raise revenue for tribal irrigation and agriculture (28 Stat. 334). Article V states that the allotments shall be held in trust (28 Stat. 334), while Article VI states that lands that cannot be irrigated shall be open to settlement under the general land laws (28 Stat. 334). Article VII preserves an Indian school on the Reservation (28 Stat. 334-335). Article VIII states that the Agreement shall be in force after its approval by Congress, which Congress provided in the 1894 Act, together with statutory provisions granting private rights-of-way through the Reservation for a railroad and an irrigation company. 28 Stat. 335-336.

2. The Department Of The Interior's Initial Rejection Of The Quechan Tribe's Land Claims

The 1893 Agreement has been a source of legal conflict since as early as 1935. The construction of the All-American Canal, which precipitated the interstate conflict in *Arizona I*, see 373 U.S. at 554-555, prompted a separate controversy on the Fort Yuma Reservation. The Department of the Interior's Bureau of Reclamation sought to route the canal, which was designed to provide Colorado River water to non-Indian farmers in California, through the Reservation. The Department of the Interior's Indian Office asserted that the Bureau of Reclamation was required to pay the Quechan Tribe compensation for the right-of-way. The Bureau disputed that the Tribe was entitled to compensation, arguing that the canal passed through lands that the

Tribe had relinquished to the United States through the 1893 Agreement. The Secretary of the Interior submitted the question to the Solicitor of the Interior, Nathan Margold, who agreed with the Bureau that the 1893 Agreement had unconditionally ceded the lands in question. See 1 Dep't of the Interior, Opinions of the Solicitor Relating to Indian Affairs 596 (No. M-28198 Jan. 8, 1936).

3. The Quechan Tribe's Commencement Of Suit Under The Indian Claims Commission Act

In 1946, Congress enacted the Indian Claims Commission Act, ch. 959, 60 Stat. 1049, 25 U.S.C. 70 *et seq.* (1976), which created an Article I tribunal with power to decide claims of Indian Tribes against the United States.[2] The Quechan Tribe filed an action before the

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[2] The Indian Claims Commission Act authorized any Indian Tribe, band, or other identifiable group of Indians to commence an action against the United States, for

> (1) claims in law or equity arising under the Constitution, laws, treaties of the United States, and Executive orders of the President; (2) all other claims in law or equity, including those sounding in tort, with respect to which the claimant would have been entitled to sue in a court of the United States if the United States was subject to suit; (3) claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity; (4) claims arising from the taking by the United States, whether as a result of a treaty of cession or otherwise, of lands owned or occupied by the claimant without the payment for such lands of compensation agreed to by the claimant; and (5) claims based upon fair and honorable dealings that are not recognized by any existing rule of law or equity.

§ 2, 60 Stat. 1050. See generally *United States* v. *Dann*, 470 U.S. 39 (1985). The Commission resolved more than 500 cases between 1946 and 1978. Pursuant to Act of Congress (Pub. L. No. 94-465, 90 Stat. 1990), the Commission ceased its operations on September 30, 1978, and transferred its remaining cases to the Court of Claims. See United States Ind. Cl. Comm'n, *Final Report*, H.R. Doc. No. 383, 96th Cong., 2d Sess. (1980).

[3] It appears that, during the long course of the litigation, the Tribe sometimes emphasized its theory that the 1893 Agreement was invalid and that the Tribe retained title to the land, while at other times it emphasized its alternative theory that the 1893 Agreement resulted in an uncompensated taking of tribal lands or

Commission challenging the 1893 Agreement. See Petition for Loss of Reservation, *Quechan Tribe of the Fort Yuma Reservation* v. *United States*, No. 320 (filed Aug. 10, 1951) (App., *infra*, 11a-23a). The Tribe's petition was styled as a "Petition for Loss of Reservation," but it sought relief on a variety of theories. It alleged for example, that the 1893 Agreement had resulted in an "expropriation" of part of the Tribe's original reservation, *id.* at 13a-14a, and that the Agreement had been obtained through fraud, coercion, and unconscionable consideration, rendering it "wholly nugatory," *id.* at 17a-18a. The Tribe sought both monetary compensation, *id.* at 19a, 21a, 22a, and "such other and further relief as to [the] Commission may appear just and equitable," *id.* at 23a. In June 1958, the Tribe amended its petition to add additional allegations, including that the United States had defaulted on its obligations under the 1893 Agreement and that, if the Commission determined that the 1893 Agreement is valid and binding, the Tribe should be awarded damages for the United States' breach. *Id.* at 26a-27a.[3]

The Commission conducted a trial on liability, but stayed further proceedings in 1970 because legislation had been proposed in Congress to return the disputed lands to the Tribe. The legislation was not enacted, and the Commission vacated the stay. See *Quechan Tribe of the Fort Yuma Reservation* v. *United States*, 26 Ind. Cl. Comm'n 15 (1971) (App., *infra*, 29a-34a). Upon the lifting of the stay, the Tribe requested permission to supplement the record with additional evidence showing the invalidity of the 1893 Agreement, so that the Tribe could establish that it retained title to the land. *Id.* at 30a-31a. The Commission granted the Tribe the opportunity to introduce such evidence, but the Commission also stated that it lacked the power to declare the Agreement invalid. *Id.* at 31a-34a. The Commission observed that the evidence nevertheless could be relevant to the question of damages on other available theories of recovery. *Id.* at 32a. On December 15, 1976, the Indian Claims Commission transferred the matter to the Court of Claims. See H.R. Doc. No. 383, 96th Cong., 2d Sess. 121 (1980); see note 2, *supra*.

4. The Department Of The Interior's Reconsideration Of The Quechan Tribe's Land Claims

Faced with the Indian Claim's Commission's statement that it had no authority to invalidate the 1893 Agreement, the Tribe requested the Department of the Interior to reconsider its position that the 1893 Agreement was valid.[4] The ensuing events are set out in a 1977 Opinion that Interior Solicitor Scott Austin prepared in response to congressional oversight hearings into the Quechan land dispute. See Opinion of the Solicitor, Dep't of the Interior, No. M-36886 (Jan. 18, 1977), 84 Interior Dec. 1 (1977) (the Austin Opinion); *Quechan Tribe of Fort Yuma Reservation, California: Hearings Before the Subcomm. on Indian Affairs of the Senate Comm. on Interior and Insular Affairs*, 94th Cong., 2d Sess. (1976) (*1976 Hearings*).

The Austin Opinion recites that the Tribe's counsel met with Solicitor Frizzell in 1973 and that the Solicitor agreed to initiate an examination into the legal question and the underlying facts. 84 Interior Dec. at 33. Attorneys within the Solicitor's office examined the matter and prepared a number of drafts of an opinion. *Ibid.* In 1976, Secretary Kleppe and other officials met with representatives of the Quechan Tribe and non-Indian interests. Secretary Kleppe referred the matter to Solicitor Austin, who concluded, in accordance with the 1936 Margold Opinion, that the 1893 Agreement was valid, and he so notified the Tribe. *Id.* at 33- 34. Solicitor Austin's action prompted the congressional oversight hearings cited above. See *1976 Hearings*, *supra*. In those hearings, the Secretary agreed to direct the Solicitor to prepare a written legal opinion explaining his decision. See note 6, *infra*. Solicitor Austin published his opinion on January 17, 1977, in response to the congressional and other inquiries. 84 Interior Dec.

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required the payment of damages based on an alleged violation of a duty of fair and honorable dealings (see note 2, *supra*). See *Quechan Tribe of the Fort Yuma Reservation* v. *United States*, 26 Ind. Cl. Comm'n 15 (1971) (App., *infra*, 29a-34a); Dep't of the Interior, Opinion of the Solicitor, No. M-36886 (Jan. 18, 1977), 84 Interior Dec. 1, 31-32 (1977) (Austin Opinion) (discussed at pages 22-24, *infra*).

[4] In 1968, Solicitor Edward Weinberg had reaffirmed the Department's view that the 1893 Agreement was valid in an unpublished memorandum issued in connection with a Bureau of Land Management lease. See Austin Opinion, 84 Interior Dec. at 33.

at 2. The Austin Opinion sets out in detail the history of the Quechan land dispute. See *id.* at 2-34. It concludes that the 1893 Agreement is valid and enforceable, relying primarily on a determination that the Tribe's cession of the disputed boundary lands was unconditional and did not depend on the government's fulfillment of its undertakings in the Agreement. *Id.* at 35-41.[5]

Less than two years later, while the Quechan Tribe's actions under the Indian Claims Commission Act remained pending (albeit transferred from the Commission to the Court of Claims, see note 2, *supra*), Solicitor Leo Krulitz reconsidered the matter in response to the requests of the Quechan Tribe, the Bureau of Indian Affairs, and Chairman Henry Jackson of the Senate Committee on Interior and Insular Affairs. See Dep't of the Interior, Opinion of the Solicitor, No. M-36908 (Dec. 20, 1978), 86 Interior Dec. 3, 4-5 (1979) (Krulitz Opinion). Solicitor Krulitz noted at the outset that the Quechan land dispute had provoked considerable debate within the Interior Department and that the Austin opinion had been issued under unusual circum-

[5] Solicitor Austin also concluded that: (1) Congress's enactment of legislation in 1904 providing for the irrigation of tribal lands did not implicitly repeal the 1893 Agreement (84 Interior Dec. at 41-44); (2) assuming arguendo that the cession was conditional, the government had satisfied the conditions (*id.* at 44-47); (3) the government had not treated the disputed lands as if they continued to belong to the Tribe (*id.* at 47-49); (4) the special rules governing construction of agreements with Indian Tribes did not compel a different result (*id.* at 49-50); (5) the Tribe had failed to document its allegations of fraud, coercion, and inequity (*id.* at 50-53); and (6) prior judicial and administrative precedents supported his interpretation (*id.* at 53).

stances. *Id.* at 4.[6] The "sharp and continuing divergence in legal views with respect to this issue" prompted the Solicitor to direct a "review of the Department's files and all previously prepared legal opinions to provide an independent evaluation of the Quechan claim to the 25,000 nonirrigable acres." *Id.* at 4.

Based on that review, Solicitor Krulitz concluded that "the 1893 agreement and 1894 ratifying statute provided for a *conditional* cession of the nonirrigable acreage." 86 Interior Dec. at 4. He summarized his basic conclusion as follows:

> The conditions articulated in the agreement, which included the allotment and irrigation of irrigable land to the Indians, the sale of surplus to settlers under strictly prescribed conditions, the construction of an irrigation canal, and the opening of nonirrigable lands to settlement, were not met by the United States. No lump sum, or other form of compensation, was provided for the land cession.

[6] "Prior to the issuance of the [Austin Opinion], a draft Solicitor's Opinion to the opposite effect was widely circulated. That Opinion concluded that the 1893 agreement and the 1894 ratifying statute provided for a conditional cession of the nonirrigable lands, that the conditions were not fulfilled, and that the cession of the nonirrigable lands had therefore not been effected. Department files on this subject reveal that the draft opinion was seriously considered, and that extensive preparations were made for the issuance of a decision in favor of the tribe. The February 1976 decision by the Solicitor upholding the 1936 opinion was an unexpected event. The Senate Subcommittee on Indian Affairs held hearings in May and June of 1976, to air the controversy and learn the legal basis of the 1976 decision by the Solicitor. In those hearings, the Secretary agreed to direct the Solicitor to prepare a written legal opinion supporting the 1976 decision. A written opinion, [the Austin Opinion], was published on Jan. 17, 1977." 86 Interior Dec. at 4.

> Allotment and irrigation did not occur on the reservation until Congress passed a 1904 statute (33 Stat. 189), which applied the Reclamation Act to the Ft. Yuma and Colorado River Reservation. The 1904 Act appears to be totally unrelated to the 1893 cession agreement, except for mention of it in the legislative history as part of the explanation of the continuing lack of irrigation on the reservation. In short, the conditional cession in 1893 was never effected and the title to the nonirrigable acreage, therefore, remains in the Tribe.

Id. at 4-5. See *id.* at 6-22 (setting out the Solicitor's legal analysis). The Solicitor accordingly overruled the Austin Opinion and concluded that "[t]itle to the subject property is held by the United States in trust for the Quechan Tribe." *Id.* at 22. On December 20, 1978, Secretary of the Interior Cecil Andrus entered the Secretarial Order based on the Krulitz Opinion, see App., *infra*, 41a; *Arizona II*, 460 U.S. at 632-633, and Secretary of the Interior James Watt later reissued that Order to describe, with greater particularity, the Fort Yuma Reservation's boundaries, see 46 Fed. Reg. 11,372 (1981).[7]

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[7] The Secretarial Order recognized that the Quechan Tribe was not entitled to lands and property interests that the United States had acquired pursuant to Act of Congress or had conveyed to third parties prior to December 20, 1978, and the Order expressly identified those property rights. See 46 Fed. Reg. at 11,372-11,375. The Secretarial Order also recognized that the "[n]othing contained herein shall prevent the Tribe from recovering whatever compensation it may be determined is appropriate in any proceeding now pending or hereafter brought for past use of such lands," but that the Tribe had relinquished any claims against third parties for trespass. *Id.* at 11,375.

5. The Impact Of The Secretarial Order On Pending Litigation

The Secretarial Order had a direct impact on ongoing litigation, both with respect to this Court's proceedings in *Arizona* v. *California* and with respect to the Quechan Tribe's suit under the Indian Claims Commission Act, which by that time was pending in the Court of Claims (see note 2, *supra*). The Secretarial Order expressly recognized that the Quechan Tribe held title to the affected boundary lands. As a result, the United States was required to modify its litigation positions in those cases to reflect that change in view. The Master's recommendation rests on a fundamental misunderstanding of the United States' corresponding actions in the two cases.

In the case of the *Arizona* v. *California* original action, the Secretarial Order prompted the United States to file a water rights claim for the affected boundary lands, and it provided the basis for the Quechan Tribe's intervention in the original action to assert a similar (albeit larger) water rights claim. See *Arizona II*, 460 U.S. at 632-633; Report of Special Master Tuttle 62 (Feb. 22, 1982); see also 46 Fed. Reg. at 11,375 (provision in Order reissued by Secretary Watt, restating provision in 1978 Secretarial Order, specifically contemplating the filing of a claim for water rights for the boundary lands in *Arizona* v. *California*). Those water rights claims are, of course, the precise claims that the Court has referred to Special Master McGarr for adjudication in these proceedings. See McGarr Report 5.

In the case of the Quechan Tribe's suit under the Indian Claims Commission Act, the Secretarial Order fundamentally altered the posture of the case. As we have explained, the Tribe's claims under the Indian

Claim Commission Act rested on alternative theories. On the one hand, the Tribe argued that the 1893 Agreement was invalid. If that was true, and the Agreement was therefore ineffective in accomplishing a cession of Tribal lands, the Tribe would own the disputed land and the United States would be potentially liable for trespass or for the Tribe's temporary loss of the use of the lands.[8] On the other hand, the Tribe argued in the alternative that the 1893 Agreement was valid, but resulted in a permanent uncompensated taking of those lands or gave rise to damages under a "fair and honorable dealings" theory. The Secretarial Order amounted to an admission by the United States that the Agreement was ineffective to accomplish a cession of the Tribe's lands and that the Tribe owned the disputed lands. To be sure, the Secretarial Order could be challenged by affected third parties in other litigation. See *Arizona II*, 460 U.S. at 636-639. But unless set aside in third-party litigation, the Secretarial Order would establish crucial elements of the Tribe's former theory and largely moot the Tribe's claim under the second theory.[9]

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[8] As we have explained, the Indian Claims Commission stated in a 1971 opinion that it lacked the authority to invalidate the 1893 Agreement. See pages 21-22, *supra*. The Commission, however, could award damages for trespass or temporary occupation if the United States conceded that the Tribe retained ownership of the affected lands. See *Northern Paiute Nation* v. *United States*, 490 F.2d 954, 956, 959 (Ct. Cl. 1973); *Goshute Tribe* v. *United States*, 31 Ind. Cl. Comm'n 225, 291-306, aff'd, 512 F.2d 1398 (Ct. Cl. 1975).

[9] The Secretarial Order would not completely moot the Tribe's taking claim because the Tribe sought reimbursement for certain lands that the United States had acquired without paying compensation and would permanently retain regardless of the validity of the 1893 Agreement. See note 7, *supra*. Those lands included, for example, the right of way for the All-American Canal, which had prompted the original Margold opinion. See pages 17-18, *supra*.

On May 26, 1983, less than two months after this Court's decision in *Arizona II*, the United States and the Quechan Tribe filed a joint memorandum with the United States Claims Court (which had succeeded to the jurisdiction of the Court of Claims over claims under the Indian Claims Commission Act[10]), in which they expressly acknowledged the consequences of the Secretarial Order. See Joint Memorandum re Stipulations (May 26, 1983) (App., *infra*, 35a-41a). The joint memorandum stated that, "[a]ccording to the order of the Secretary of the Interior, dated December 20, 1978, and by Supplemental Determination and Directives of the Secretary of the Interior, dated January 30, 1981, the 1884 executive order boundary of the Fort Yuma Indian Reservation * * * still remain[s] the reservation boundary." *Id.* at 36a; accord *id.* at 36a-37a. The joint memorandum then stated:

> 8. If the December 20, 1978, secretarial order is upheld, there are no remaining issues as to the liability of the United States for the acquisition of portions of the Quechan Reservation. The issues remaining in the case relate to the determination of the damages sustained by the Quechan.
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> 9. If the December 20, 1978, secretarial order is upheld, the proper measure of damages for the portions of the reservation which were permanently acquired from the Quechan [*e.g.*, the right-of-way for the All-American Canal, see note 9, *supra*] is the fair market value of those portions of the reserva-

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[10] See Federal Courts Improvements Act of 1982, Pub. L. No. 97-164, § 149, 96 Stat. 46.

> tion on the effective dates of the permanent acquisitions. No stipulation is entered into as to the measure of damages for the temporary deprivation of those lands which were reaffirmed by the executive order of December 20, 1978, or of those lands which, after a period of temporary deprivation, were permanently acquired.

App., *infra*, 37a-38a.

The United States and the Tribe were unable to enter into a stipulation respecting the measure of damages for the temporary deprivation of the land because they disagreed on the way such damages should be calculated. The Tribe offered to stipulate that, as a result of the Secretarial Order of December 20, 1978, there were no remaining liability issues and that damages respecting the Tribe's retained boundary lands should be measured on the basis of their fair rental value. App., *infra*, 39a. The United States, however, declined to enter into those stipulations because of this Court's conclusion in its then-recent decision in *Arizona II* that there must be a judicial determination of the boundary (see 460 U.S. at 636-639), and because the United States contended in any event that the proper measure of damages for a temporary deprivation is the rents actually received by the United States. App., *infra*, 39a-40a. The United States' concern is understandable: If the United States unconditionally stipulated that the Tribe owned the disputed lands, and a third party (*e.g.*, a party in the *Arizona* v. *California* water rights litigation) later obtained a judgment invalidating the Secretarial Order while the Claims Court action remained pending, then the United States could remain bound by the stipulation in the Claims Court proceedings and perhaps be liable for damages

based on the premise that the Secretarial Order was valid, even though it had been judicially determined not to be. Indeed, it was possible that the United States could remain liable on the basis of the stipulation and, at the same time, be subject to renewed tribal claims (such as a resurrected "fair and honorable dealings claim" predicated on a permanent loss of the boundary lands under the 1893 Agreement) under the Indian Claims Commission Act.

6. The Settlement Of The Quechan Tribe's Indian Claims Commission Act Suit

The Quechan Tribe ultimately submitted a proposal for settling the Tribe's claims under the Indian Claims Commission Act that provided a monetary payment for the Tribe's outstanding claims and, at the same time, resolved the United States' concern about continuing liability if the Secretarial Order were invalidated in collateral litigation. The United States accepted that proposal (after it was approved by a general membership meeting of the Tribe and by the Tribal Council), and the parties jointly submitted it for entry as a final judgment. See Stipulation for Settlement and Entry of Final Judgment (filed Aug. 5, 1983) (App., *infra*, 42a-62a). Under the terms of the final judgment, the United States agreed to pay the Quechan Tribe $15 million in full settlement of the Tribe's claims. *Id.* at 42a. The parties stipulated that the payment would constitute full satisfaction of all current and future liability, including—

> all rights, claims, or demands which plaintiff has asserted or could have asserted with respect to the claims in Docket 320, and plaintiff shall be barred thereby from asserting any further rights, claims, or demands against the defendant and any future

> action on the claim encompassed on Docket 320 * * *.[11]

Ibid. The United States and the Tribe additionally stipulated:

> The final judgment entered pursuant to this stipulation shall be construed to be a compromise and settlement and shall not be construed as an admission by either party for the purpose of precedent or argument in any other case.

Id. at 43a. The Claims Court found the proposed settlement equitable and just to both parties and entered it as a final judgment. See Final Judgment (entered Aug. 11, 1983) (App., *infra*, 66-67a). The Judgment recited the parties' stipulations concerning the preclusive effect of the judgment as between the Tribe and the United States. *Ibid.* The practical effect of the judgment is plain from the its terms and the stipulations of the parties.

First, the judgment granted the Tribe monetary relief on its outstanding claims. See App., *infra*, 66a. The United States' payment necessarily rested on the Secretarial Order, which recognized that the Tribe owned the disputed boundary lands and might be additionally entitled to compensation for a permanent loss of certain lands that remained in government ownership and for a temporary deprivation of the boundary lands. See note 7, *supra*; 46 Fed. Reg. at 11,375. That understanding is manifest in the documents that the parties submitted with their stipulations

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[11] Correspondingly, the stipulation also barred the United States from asserting any claims, offsets or counterclaims against the Tribe that had been or could have been asserted in Docket 320. See App., *infra*, 42a-43a.

and motion to approve the settlement, including "a copy of the letter approving the settlement of the litigation by the Department of the Interior." App., *infra*, 64a. That letter recognized that the Secretarial Order affirmed the Tribe's right to most of the lands in question and that the Tribe was seeking damages for a temporary loss of the use of those lands that terminated with the December 20, 1978, issuance of the Secretarial Order. See *id.* at 59a ("This case involves claims of the Quechan Tribe for damages for the taking of parts of their reservation after 1893 and the loss of use of other parts of the reservation from 1893 to 1978.").

Second, the Claims Court judgment recognized, as this Court specifically noted in *Arizona II*, that the Secretarial Order would be subject to judicial challenge by third parties in other fora. App., *infra*, 67a. The parties' stipulations made clear that the Claims Court judgment was based on "a compromise and settlement" and "shall not be construed as an admission by either party for the purposes of precedent or argument in any other case." *Ibid.* Those court-approved stipulations expressly affirmed the parties' understanding that the judgment, based on a compromise rather than adjudication of the issues, would not affect the parties' ability to litigate related issues—such as reserved water rights —in other fora.

Third, the judgment protected the United States from the prospect of future liability in the event that litigation in other fora resulted in the invalidation of the Secretarial Order. The judgment made clear that the Quechan Tribe "shall be barred thereby from asserting any further rights, claims, or demands against the [the United States] and any future action on the claims encompassed on Docket 320." App., *infra*, 67a. The Claims Court judgment thus definitively concluded the

Tribe's Indian Claims Commission Act suit against the United States. But that judgment was not intended, by any measure, to prevent the United States or the Tribe from asserting claims against *other* entities in *other* fora, including claims for reserved water rights in the *Arizona* v. *California* litigation for the very lands that, as both the United States and the Tribe agreed, continued to be held by the United States in trust for the Tribe.

Those provisions, read against the history of the Quechan land dispute, demonstrate that the Claims Court judgment does not preclude either the United States or the Tribe from asserting a water rights claim in the *California* v. *Arizona* litigation. The United States and the Quechan Tribe were able to reach a settlement of the Tribe's suit because the Secretarial Order established (at least as between the United States and the Tribe) that the Tribe owned the lands in question. The parties structured the compromise judgment to ensure that it would conclusively resolve the litigation between the United States and the Tribe, while allowing the United States and the Tribe to assert claims to reserved water rights for the lands in question.

B. THE MASTER MISUNDERSTOOD THE NATURE OF THE CLAIMS COURT'S JUDGMENT AND ITS LEGAL SIGNIFICANCE

The Master's conclusion that the Claims Court's judgment precludes the Tribe (and the United States) from pursuing water rights claims rests on a misunderstanding of that judgment and a misapplication of the legal principles governing claim and issue preclusion.

1. The Master Misunderstood The Nature Of The Claims Court's Judgment

The Master explained his rationale for rejecting the Quechan Tribe's claim for water rights in his Memorandum Opinion and Order No. 4. See McGarr Report App. 2(A). He first noted that the Claims Court's judgment was based on the stipulations of the United States and the Tribe, which stated that the Tribe would —

> ". . . be barred thereby from asserting any further rights, claims or demands against the defendant or any future action on the claims encompassed on docket no. 320 . . ."

and that the United States and the Tribe agreed to

> ". . . waive all rights to appeal from or otherwise seek review of such final determination . . ."

McGarr Report App. 2(A), at 10. The Master then stated:

> If the boundary lands claim of the Quechan Tribe here are lands also the subject of and part of Court Claims Docket No. 320, and I assume that this is so, the above quoted language precludes the Quechan Tribe from water rights claims based on boundary lands claims in this case.

Ibid. The Master additionally stated:

> The *ex parte* action of the Secretary in 1978 cannot be viewed as any way dispositive of this issue. The final order of the Court of Claims addresses itself to all the claims of the Tribe then pending, presumably including the land in issue here, and is not affected, as a final judicial decision, by an earlier administrative order.

Ibid.

The Master's reasoning overlooks the fact that the United States and the Tribe entered into a settlement precisely *because* they now agreed, in light of the Secretarial Order, that the Tribe owned the land in question. If there could be any doubt on that point, it is dispelled by the consistent position of the United States and the Tribe in this case ever since the December 20, 1978 date of the Secretarial Order—both prior to entry of the Claims Count's judgment, see *Arizona II*, 460 U.S. at 632, and thereafter—that there is a reserved water right for irrigable acreage within the boundary lands precisely *because* the Tribe owns those lands. Indeed, in light of that agreement between the United States and the Tribe, there could not even have been be a case or controversy, as between the United States and the Tribe in the Claims Court, over that issue. The only justiciable question that remained with respect to the boundary lands that are at issue in this case was the Tribe's right to compensation for the loss of the use of those lands prior to December 20, 1978, when the Secretary of the Interior formally recognized the Tribe's title to the lands. The United States' payment of $15 million represented a compromise of *that* claim.

The United States clearly and consistently made those points throughout the proceedings before the Master. The Master nevertheless failed to grasp their significance. When the United States emphasized those points in its motion for reconsideration, the Master suggested that the United States' position was a "newcomer on this long litigated scene," McGarr Report App. 2(B), at 2, and he then proceeded to dismiss the government's argument by misstating it:

> The United State certainly did not pay $15 million to the Quechan Tribe to settle a Court of Claims case which it believed was not pending because it had been mooted by a Solicitor's ruling many years before.

Ibid. As the United States had repeatedly explained to the Master, the $15 million payment was made primarily to compensate the Tribe for a temporary deprivation of the boundary lands at issue in this litigation—lands that, under the Secretarial Order, the Tribe continued to own. See Opening Memorandum of the United States 20-22; Reply Memorandum of the United States at 9-12; Motion for Reconsideration of the United States, at 1-5; Reply Memorandum of the United States on Motion for Reconsideration at 1-9. Indeed, Secretary Watt's Secretarial Order, like the 1978 Secretarial Order, specifically acknowledged that the United States might be required to make such a payment. See 46 Fed. Reg. at 11,375 ("Nothing contained herein shall prevent the Tribe from recovering whatever compensation it may be determined is appropriate in any proceeding now pending or hereafter brought against the United States for past use of such lands.").

The Master's Memorandum Opinions and Orders accordingly demonstrate that the Master had a flawed understanding of the Claims Court's judgment. For that reason alone, his recommendation is erroneous and should be overruled. In addition to that flaw, however, the Master also incorrectly applied hornbook principles of claim and issue preclusion to reject the Tribe's claim.

2. The Master Misapplied Settled Law Respecting Claim And Issue Preclusion

The Master concluded that the Claims Court's judgment, which was based on a settlement between the

United States and the Quechan Tribe of the Tribe's outstanding Indian Claims Commission Act claims, precluded the Tribe from claiming reserved water rights for the lands at issue in that case. That conclusion rests on a mistaken understanding of the law.

The principle of res judicata recognizes that, as a general matter, a "valid and final personal judgment is conclusive between the parties." Restatement (Second) Judgments § 17 (1982). That principle embraces the concept of "claim preclusion,"—sometimes referred to as the rules of merger and bar—which generally bar parties from litigating claims against one another that were or could have been advanced in an earlier proceeding. See *id.* § 17 cmts. a-b. It also embraces the concept of issue preclusion—sometimes referred to as collateral estoppel—which generally bars parties from relitigating issues arising from the same or different claims. See *id.* § 17, cmt. c. See, *e.g.*, *State* v. *Kerr McGee Corp.*, 898 P.2d 1256 (N.M. Ct. App. 1995) (applying the concepts of claim and issue preclusion to an Indian Claims Commission Act judgment).

Under principles of claim preclusion, the Claims Court's judgment precludes the Quechan Tribe from relitigating the claims the Tribe asserted against the United States in the proceedings under the Indian Claims Commission Act. That result is embodied in the express terms of the judgment itself, which provides that the Quechan Tribe is barred from asserting any claim that the Tribe "has asserted or could have asserted" against the United States in those proceedings. And the judgment goes on to provide that the United States similarly is barred from asserting against the Tribe any claim, counterclaim, or offset the United States "has asserted or could have asserted" against the Tribe in the Indian Claims Commission Act proceedings. App., *infra*, 67a. Nothing in the judgment purports to bar either the United States or the Tribe from asserting *different* claims against *other* parties in *other* fora, and the judgment's express provision for only a narrower preclusive effect as between the parties would seem to foreclose such a result. Nor is the assertion of such claims by either the United States or the Tribe barred by principles of claim preclusion, either with respect to judgments in general or with respect to judgments under the Indian Claims Commission Act in particular.[12] The principles of claim preclusion accordingly pose no bar to the claim by the United States and the Quechan Tribe for reserved water rights in this original action. The Tribe's Indian Claim Commission Act claims, which can be asserted only against the United States for a money judgment, are different from the claims asserted by the United States and the Tribe for a judicial declaration of reserved water rights

[12] Section 22(a) of the Indian Claims Commission Act, § 22(a), 60 Stat. 1055, 25 U.S.C. 70u(a) (1976), provides that "payment of any claim * * * shall be a full discharge *of the United States* of all claims and demands touching any of the matters involved in the controversy" (emphasis added). See *United States* v. *Dann*, 470 U.S. 39, 45 (1985). Section 22(a) also provides that a report by the Commission to Congress determining that the claimant is entitled to recover "shall have the effect of a final judgment of the Court of Claims." The effect of a judgment of the Court of Claims (now the Court of Federal Claims) is prescribed by 28 U.S.C. 2519, which provides: "[a] final judgment of the United States Court of Federal Claims against any plaintiff shall forever bar any further claim, suit, or demand *against the United States* arising out of the matters involved in the case or controversy" (emphasis added). See *Dann*, 470 U.S. at 45 & n.10. The statutory provisions governing the effect of the Claims Court's judgment thus reinforce the conclusion that that judgment does not bar claims *by* the United States (or by the Tribe) against third parties.

for lands that the United States holds in trust for the Tribe. See, *e.g.*, *Kerr-McGee*, 898 P.2d at 1259-1260.

Under principles of issue preclusion, the Claims Court's judgment would generally prevent the United States and Quechan Tribe from relitigating between themselves an issue that was "actually litigated and determined if its determination was essential to that judgment." Restatement (Second) Judgments § 17(3) (1982); see also *id.* § 27 (restatement of the general rule); *id.* § 28 (exceptions). The application of issue preclusion is not necessarily limited, however, to litigation between the original parties; in some circumstances, it can also prevent parties from relitigating an issue in a later suit involving persons who did not participate in the original proceedings. See *id.* § 29; but see *United States* v. *Mendoza*, 464 U.S. 154 (1984) (nonmutual collateral estoppel does not apply against United States). We therefore may assume, *arguendo*, that in some circumstances a Claims Court judgment in a case such as this could prevent the Tribe concerned from relitigating issues that were decided by the Claims Court with persons who are parties in other litigation, such as the *Arizona* v. *California* water-rights litigation involved here. See *ibid.* But issue preclusion applies only if the issue at stake was "actually litigated and necessary to the outcome of the first action." *Parklane Hoisery Co.* v. *Shore*, 439 U.S. 322, 326 n.5 (1979); see, *e.g.*, *Regions Hosp.* v. *Shalala*, 522 U.S. 448, 463-464 (1998) ("Absent actual and adversarial litigation * * *, principles of issue preclusion do not hold fast."); *Cromwell* v. *County of Sac*, 94 U.S. 351, 353 (1877) ("[T]he judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted. * * * [T]he inquiry must always be as to the point or question actually litigated."); see also *Brown* v. *Felson*, 442 U.S. 127, 139 n.10 (1979); *Montana* v. *United States*, 440 U.S. 147, 153 (1979). Here, that essential precondition is not satisfied.

The Claims Court judgment does not preclude litigation in this original action of the existence of reserved water rights for the Fort Yuma Reservation, because that judgment did not result in the actual litigation of any issue that would collaterally estop either the United States or the Tribe from claiming that the United States holds the boundary lands in trust for the Tribe and that reserved water rights should be recognized for those lands. The Claims Court did not decide whether the Quechan Tribe owned the boundary lands or whether those lands included reserved water rights. The court entered its judgment "based on a compromise and settlement," and it expressly stated that the judgment "shall not be construed as an admission by either party for the purposes of precedent or argument in any other case." App., *infra*, 67a. See *Kerr-McGee Corp.*, 898 P.2d at 1260; see *id.* at 1260-1264 (rejecting the argument that a compromise judgment of land claims under the Indian Claims Commission Act precluded the Tribe from litigating its water rights respecting those lands); see also *Devils Lake Sioux Tribe* v. *North Dakota*, 917 F.2d 1049, 1055-1056 (8th Cir. 1990) (interpreting an ambiguous Indian Claims Commission Act settlement as not precluding the Tribe's claim to a lakebed where the United States acknowledged that the lakebed had not been taken and no compensation had been paid for it).

As a general matter, "a judgment entered by confession, consent, or default" cannot result in issue preclusion because "none of the issues is actually litigated." Restatement (Second) Judgments § 27 cmt. e (1982). Accord 1B James Wm. Moore, *Moore's Federal*

Practice ¶ 0.443[3], at 814 (1988) ("collateral estoppel in its usual connotation should not result from a consent judgment, because the requisite litigation and judicial determination of issues are normally not present"). Here, the United States and the Tribe settled the Tribe's Indian Claim Commission Act claims because the Department of the Interior determined that the Tribe owned the disputed boundary lands. By virtue of the government's concession, there remained no controversy between the United States and the Tribe respecting that issue. See pages 27-28, *supra*. As the New Mexico Court of Appeals correctly recognized in analogous circumstances, "a consent judgment usually falls short of a full-blown contested adjudication of all issues, so that the end result, being achieved by negotiation, may well include matters that were not actually and necessarily decided by the court." *Kerr-McGee Corp.*, 898 P.2d at 1260.

Quite aside from the fact that the Claims Court's judgment was entered on the basis of a settlement, there is simply no basis for inferring that the Claims Court adjudicated any issue respecting the Tribe's title to the boundary lands or the existence of reserved water rights for those lands. The judgment is entirely silent on those matters. It is hornbook law that an "opaque judgment fails to preclude relitigation." 18 Charles Alan Wright, et al., *Federal Practice and Procedure* § 4420, at 184 (1981). "The first rule for identifying the issues to be precluded is that if there is no showing as to the issues that were actually decided, there is no issue preclusion. The burden is on the party

asserting preclusion to show actual decision of the specific issues involved." *Id.* § 4420, at 184-185.[13]

The stipulations of the United States and the Quechan Tribe provide no basis for precluding litigation of the Tribe's water rights. To the contrary, those stipulations, together with the Secretarial Order and this Court's decision in *Arizona II*, manifest agreement between the United States and the Tribe that the Tribe owns the boundary lands and that the United States and the Tribe would be entitled to assert a claim for reserved water rights for those lands in these proceedings and have that claim decided on the merits. See pages 24-26, 28, 30-33, *supra*. It is simply inconceivable that the United States and the Tribe would have consented to entry of the judgment by the Claims Court if the effect of that judgment were to deny the United States and the Tribe any opportunity to establish the existence of reserved water rights for the very lands that both parties agree are held by the United States for the benefit of the Tribe.

For the foregoing reasons, the Master has misapplied the doctrines of claim and issue preclusion and has unfairly denied the United States and the Tribe of their day in court.

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[13] Indeed, the lower courts commonly state that "[t]he party seeking to preclude litigation of an issue has the burden of showing with clarity and certainty that the issue was actually and necessarily determined; if the basis of the prior decision is unclear, subsequent litigation may proceed." *Kerr-McGee Corp.*, 898 P.2d at 1260; accord *Clark* v. *Bear Stearns & Co.*, 966 F.2d 1318, 1321 (9th Cir. 1992); *Connors* v. *Tanoma Mining Co.*, 953 F.2d 682, 684 (D.C. Cir. 1992); *Ottley* v. *Sheepshead Nursing Home*, 784 F.2d 62, 65 (2d Cir. 1986).

C. THIS CASE SHOULD BE REMANDED TO THE MASTER FOR A DETERMINATION OF THE EXISTENCE AND QUANTIFICATION OF RESERVED WATER RIGHTS FOR THE BOUNDARY LANDS

The United States submits that the Master properly recommended approval of the settlements respecting the Fort Mojave and the Colorado River Indian Reservations, but erred in failing to determine the existence of reserved water rights for the boundary lands at issue in this case. We therefore submit that, while it would be appropriate for the Court to enter a supplemental decree at this time respecting reserved water rights for the Fort Mojave and Colorado River Reservations, the water rights claims for the Fort Yuma Reservation should be remanded to the Master for determination on the merits. The United States remains hopeful that the parties may be able to negotiate a proposed settlement of those claims, but if a settlement proves elusive, then the United States and the Tribe are entitled to have those claims adjudicated. The question of the existence of reserved water rights for the boundary lands basically turns on whether the 1893 Agreement made the Tribe's cession of the lands at issue conditional on the government's performance of its undertakings and, if so, whether the government failed to fulfill its obligations. The measure of the water rights asserted here, as in the case of the other Indian water rights involved in *Arizona* v. *California*, is the practicably irrigable acreage standard.

The water rights claims for the boundary lands of the Fort Yuma Reservation constitute the only outstanding issues that remain to be decided in *Arizona* v. *California*. Upon final determination of those claims, the

Court will be able to enter a final consolidated decree and bring this suit to a close.

CONCLUSION

The exception of the United States to the Report of the Special Master should be sustained.

Respectfully submitted.

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DECEMBER 1999

APPENDIX A

Act of Aug. 15, 1894, Ch. 290, 28 Stat. 286

* * * * *

AGREEMENT WITH THE YUMA INDIANS IN CALIFORNIA

SEC. 17. Whereas Washington J. Houston, John A. Gorman, and Peter R. Brady, duly appointed commissioners on the part of the United States, did on the fourth day of December, eighteen hundred and ninety-three, conclude an agreement with the principal men and other male adults of the Yuma Indians in the State of California, which said agreement is as follows:

Articles of agreement made and entered into this 4th day of December, A.D. 1893, at Fort Yuma, on what is known as the Yuma Indian Reservation, in the county of San Diego, State of California, by Washington J. Houston, John A. Gorman, and Peter R. Brady, commissioners on the part of the United States appointed for the purpose, and the Yuma Indians.

ARTICLE I.

The said Yuma Indians, upon the conditions hereinafter expressed, do hereby surrender and relinquish to the United States all their right, title, claim and interest in and to and over the following described tract of country in San Diego, Cal., established by executive order of January ninth, eighteen hundred and eighty-four, which describes its boundaries as follows:

"Beginning at a point in the middle of the channel of the Colorado River, due east of the meander corner to

sections nineteen and thirty, township fifteen south, range twenty-four east, San Barnardino meridian; thence west on the line between sections nineteen and thirty to the range line, between townships twenty-three and twenty-four east; thence continuing west on the section line to a point which, when surveyed, will be the corner to sections twenty-two, twenty-three, twenty-six, and twenty-seven, in township fifteen south, range twenty-one east; thence south on the line between sections twenty-six and twenty-seven, in township fifteen south, range twenty-one east, and continuing south on the section lines to the intersection of the international boundary, being the corner to fractional sections thirty-four and thirty-five, in township sixteen south, range twenty-one east; thence easterly on the international boundary to the middle of the channel of the Colorado River; thence up said river, in the middle of the channel thereof, to the place of beginning, be, and the same is hereby, withdrawn from settlement and sale and set apart as a reservation for the Yuma and such other Indians as the Secretary of the Interior may see fit to settle thereon: *Provided, however*, That any tract or tracts included within the foregoing-described boundaries to which valid rights have attached under the laws of the United States are hereby excluded out of the reservation hereby made.

"It is also hereby ordered that the Fort Yuma military reservation be, and the same is hereby, transferred to the control of the Department of the Interior, to be used for Indian purposes in connection with the Indian reservation established by this order, said military reservation having been abandoned by the War Department for military purposes."

ARTICLE II.

Each and every member of said Yuma Indians shall be entitled to select and locate upon said reservation and in adjoining sections five acres of land, which shall be allotted to such Indians in severalty. Each member of said band of Indians over the age of eighteen years shall be entitled to select his or her land, and the father, or, if he be dead, the mother, shall select the land herein provided for for each of his or her children who may be under the age of eighteen years; and if both father and mother of the child under the age of eighteen years shall be dead, then the nearest of kin over the age of eighteen years shall select and locate his or her land; or if such persons shall be without kindred, as aforesaid, then the Commissioner of Indians Affairs, or some one by him authorized, shall select and locate the land of such child.

ARTICLE III.

That the allotments provided for in this agreement shall be made, at the cost of the United States, by a special agent appointed by the Secretary of the Interior for the purpose, under such rules and regulations as the Secretary of the Interior may from time to time prescribe, and within sixty days after such special agent shall appear upon said reservation and give notice to the said Indians that he is ready to make such allotments; and if anyone entitled to an allotment hereunder shall fail to make his or her selection within said period of sixty days then such special agent shall proceed at once to make such selection for such person or persons, which shall have the same effect as if made by the person so entitled; and when all of said allotments are made and approved, then all of the residue of said

reservation which may be subject to irrigation, except as hereinafter stated, shall be disposed of as follows: The Secretary of the Interior shall cause the said lands to be regularly surveyed and to be subdivided into tracts of ten acres each, and shall cause the said lands to be appraised by a board of three appraisers, composed of an Indian inspector, a special Indian agent, and the agent in charge of the Yuma Indians, who shall appraise said lands, tracts, or subdivisions, and each of them, and report their proceedings to the Secretary of the Interior for his action thereon; and when the appraisement has been approved the Secretary of the Interior shall cause the said lands to be sold at public sale to the highest bidder for cash, at not less than the appraised value thereof, first having given at least sixty days' public notice of the time, place, and terms of sale, immediately prior to such sale, by publication in at least two newspapers of general circulation; and any lands or subdivisions remaining unsold may be reoffered for sale at any subsequent time in the same manner at the discretion of the Secretary of the Interior, and if not sold at such second offering for want of bidders then the Secretary of the Interior may sell the same at private sale at not less than the appraised value.

ARTICLE IV.

That the money realized by the sale of the aforesaid lands shall be placed in the Treasury of the United States, to the credit of the said Yuma Indians, and the same, with interest thereof at five per centum per annum, shall be at all times subject to appropriation by Congress, or to application, by order of the President, for the payment of water rents, building of levees, irrigating ditches, laterals, the erection and repair of

buildings, purchase of tools, farming implements and seeds, and for the education and civilization of said Yuma Indians.

ARTICLE V.

Upon the approval of the allotments provided for herein by the Secretary of the Interior he shall cause patents to issue therefor in the name of the allottees, which patents shall be of the legal effect and declare that the United States does and will hold the land thus allotted for the period of twenty-five years in trust for the sole use and benefit of the Indian to whom such allotments shall have been made, or in case of his or her decease, to his or her heirs or devisees, according to the laws of California, and that at the expiration of said period the United States will convey the same by patent to said Indian or his heirs or devisees, as aforesaid in fee, discharged of said trust and free of all incumbrance whatsoever.

And if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same before the expiration of the time above mentioned, such conveyance or contract shall be absolutely null and void. And during said period of twenty-five years these allotments and improvements thereon shall not be subject to taxation for any purpose, nor subject to be seized upon any execution or other legal process, and the law of descent and partition in force in California shall apply thereto.

ARTICLE VI.

All lands upon said reservation that can not be irrigated are to be open to settlement under the general land laws of the United States.

ARTICLE VII.

There shall be excepted from the operation of this agreement a tract of land, including the buildings, situate on the hill on the north side of the Colorado River, formerly Fort Yuma, now used as an Indian school, so long as the same shall be used for religious, educational, and hospital purposes for said Indians, and a further grant of land adjacent to the hill is hereby set aside as a farm for said school; the grant for the school site and the school farm not to exceed in all one-half section, or three hundred and twenty acres.

ARTICLE VIII.

This agreement shall be in force from and after its approval by the Congress of the United States.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

WASHINGTON J. HOUSTON, [SEAL.]

JOHN A. GORMAN, [SEAL.]

PETER R. BRADY, [SEAL.]

Commissioners on the part of the United States.

BILL MOJAVE, and others.

Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said agreement be, and the same hereby is, accepted, ratified, and confirmed.

That for the purpose of making the allotments provided for in said agreement, including the payment and expenses of the necessary special agent hereby authorized to be appointed by the Secretary of the Interior, and for the necessary resurveys, there be, and hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, the sum of two thousand dollars, or so much thereof as may be necessary.

That for the purpose of defraying the expenses of the survey and sale of the lands by said agreement relinquished and to be appraised and sold for the benefit of said Indians, the sum of three thousand dollars, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, the same to be reimbursed to the United States out of the proceeds of the sale of said lands.

That the right of way through the said Yuma Indian Reservation is hereby granted to the Southern Pacific Railroad Company for its line of railroad as at present constructed, of the same width, with the same rights and privileges, and subject to the limitations, restrictions, and conditions as were granted to the said company by the twenty-third section of the Act approved March third, eighteen hundred and seventy-one, entitled "An Act to incorporate the Texas Pacific Railroad

Company, and to aid in the construction of its road, and for other purposes:" *Provided*, That said company shall, within ninety days from the passage of this Act, file with the Secretary of the Interior a map of said right of way, together with a relinquishment by said company of its right of way through said reservation as shown by maps of definite location approved January thirty-one, eighteen hundred and seventy-eight.

The Secretary of the Interior is hereby authorized and directed to cause all the lands ceded by said agreement which may be susceptible of irrigation, after said allotments have been made and approved, and said lands have been surveyed and appraised, and the appraisal approved, to be sold at public sale, by the officers of the land office in the district wherein said lands are situated, to the highest bidder for cash, at not less than the appraised value thereof, after the first having given at least sixty days' public notice of the time, place, and terms of sale immediately prior to such sale, by publication in at least two newspapers of general circulation, and any lands or subdivision remaining unsold may be reoffered for sale at any subsequent time in the same manner, at the discretion of the Secretary of the Interior, and if not sold at such second offering for want of bidder, then the Secretary may cause the same to be sold at private sale at not less than the appraised value. The money realized from the sale of said lands, after deducting the expenses of the sale of said lands, and the other money for which provision is made for the reimbursement of the United States, shall be placed in the Treasury of the United States to the credit of said Yuma Indians, and shall draw interest at the rate of five per centum per annum, and said principal and interest shall be subject to appproprtion

by Congress, or to application by the President of the United States for the payment of water rents, the building of levees, irrigating ditches and laterals, the purchase of tools, farming implements, and seeds, and for the education and civilization of said Indians: *Provided, however*, That none of said money realized from the sale of said lands, or any of the interest thereon, shall be applied to the payment of any judgment that has been or may hereafter be rendered on claims for damages because of depredations committed by said Indians prior to the date of the agreement herein ratified.

That all of the lands ceded by said agreement which are not susceptible of irrigation shall become a part of the public domain, and shall be opened to settlement and sale by proclamation of the President of the United States, and be subject to disposal under the provisions of the general land laws.

That the Colorado River Irrigating Company, which was granted a right of way for an irrigating canal through the said Yuma Indian Reservation by the Act of Congress approved February fifteenth, eighteen hundred and ninety-three, shall be required to begin the construction of said canal through said reservation within three years from the date of the passage of this Act, otherwise the rights granted by the Act aforesaid shall be forfeited.

That the Secretary of the Interior shall have authority from time to time to fix the rate of water rents to be paid by the said Indians for all domestic, agricultural, and irrigation purposes, and in addition thereto each male adult Indian of the Yuma tribe shall be granted water for one acre of the land which shall be allotted to

him, if he utilizes the same in growing crops, free of all rent charges during the period of ten years, to be computed from the date when said irrigation company begins the delivery of water on said reservation.

APPENDIX B

BEFORE THE

Indian Claims Commission

OF THE UNITED STATES

DOCKET NO. 320

THE QUECHAN TRIBE OF THE FORT YUMA RESERVATION, CALIFORNIA, PETITIONER

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

PETITION FOR LOSS OF RESERVATION

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BEFORE THE

Indian Claims Commission

OF THE UNITED STATES

DOCKET NO. 320

THE QUECHAN TRIBE OF THE FORT YUMA RESERVATION, CALIFORNIA, PETITIONER

vs.

THE UNITED STATES OF AMERICA, DEFENDANT

PETITION FOR LOSS OF RESERVATION

First Cause of Action

Jurisdiction

1. The Quechan Tribe of the Fort Yuma Reservation, California, is and has been since time immemorial a tribe of American Indians residing within the present territorial limits of the United States. The Quechan Tribe commonly is known as the Yuma Tribe or the Yuma Indians, and all references in government reports and elsewhere to said Yuma Tribe of Indians in fact apply to the Petitioner. The terms "Petitioner", "members of the Petitioner", "Quechans", and "Quechan Indians" are used interchangeably in this petition.

2. In accordance with a constitution adopted pursuant to the provisions of the Indian Reorganization Act of June 18, 1934 (49 Stat. 984), and approved by the Secretary of the Interior on or about December 18,

1936, the Petitioner possesses a Tribal Council which is recognized by the Secretary of the Interior as the tribal organization having exclusive authority to represent and act for the Petitioner, and this action is instituted by and under the direction of said Quechan Tribal Council.

3. No group of individuals or tribal organization other than said Quechan Tribal Council is recognized by any department, office or other agency of the United States Government as having authority to represent, or act in the name of the Petitioner, and the Petitioner is not a member of any organization or other identifiable group having authority to act on behalf of the Petitioner in the matters with which this petition deals.

4. Petitioner is represented in this proceeding by its attorneys, Williamson, Hoge & Curry, 417 South Hill Street, Los Angeles, California, and McCarter, English & Studer, 11 Commerce Street, Newark, New Jersey, according to the terms of a written contract of employment with McCarter, English & Studer aforesaid, duly executed on behalf of the Petitioner and filed with and approved by the Commissioner of Indian Affairs on March 15, 1950, under Symbol I-1-Ind. 42263 and recorded in Volume 17 of Miscellaneous Records at page 27.

5. Petitioner files the claim asserted herein pursuant to the Act of Congress of August 13, 1946 (60 Stat. 1049), hereinafter referred to as the Act, and in accordance with the General Rules of Procedure promulgated by the Indian Claims Commission.

6. The claim presented herein accrued prior to August 13, 1946, and arises from the expropriation of

the greater part of a reservation on the California side of the Colorado River, established for the Petitioner by an Executive Order dated January 9, 1884, of President Arthur (a true and correct copy thereof being annexed hereto and made a part hereof as Exhibit A).

7. No suit is pending in the Court of Claims or the Supreme Court of the United States with respect to said claim, nor has said claim been filed in the Court of Claims under legislation existing at, or prior to, the date of the approval of said Act. No part of said claim has heretofore been adjudicated or acted upon by Congress, by any department of the United States Government, or by any commission, agency or court of the United States. Petitioner, has filed before the Indian Claims Commission a Petition for a General Accounting and a Land Petition (Docket Nos. 86 and . . . respectively).

8. Petitioner reserves its rights under Section 7(a)(2) and Section 13 of the aforementioned General Rules of Procedure to file further petitions or to amend the instant petition asserting claims under Section 2 of the Act based upon the same facts or upon additional events and circumstances, whether in the alternative or otherwise, and whether or not they may be deemed consistent with the claim set forth herein.

Subject Matter of this Proceeding

9. By Executive Order dated July 6, 1883, President Chester A. Arthur carved out for the use and occupancy of the Quechans and other Indians a tract of land on the Arizona side of the Colorado River within the area which had been owned by the Petitioner since time immemorial.

10. Pursuant to the aforesaid Executive Order dated January 9, 1884, President Arthur restored said territory to the public domain and in lieu thereof set aside a tract of land on the California side of the Colorado River "as a reservation for the Yuma and such other Indians as the Secretary of the Interior may see fit to settle thereon" (herein referred to as the "Reservation"). Said Reservation contained approximately 45,000 acres. All of the land therein was then, and since time immemorial had been, owned by the Petitioner, and comprised but a small part of Petitioner's original domain.

11. By the General Allotment Act of February 8, 1887 (24 Stat. 388), as amended by the Act of February 28, 1891 (26 Stat. 794), the Defendant determined that Indians, including the members of the Petitioner, were entitled, upon allotment of their reservations, to 80 acres of land for each man, woman and child, or, with respect to lands "only valuable for grazing purposes," to 160 acres each.

12. The population of the Petitioner in 1893 was reported by the Commissioner of Indian Affairs as not less than 1,084. The greater part of the 45,000 acre Reservation was valuable only for grazing purposes. The Reservation thus was inadequate to provide for the statutory allotments to the Quechan Indians if, as and when said area was allotted. Under such circumstances, the aforementioned General Allotment Acts authorized the agents of the Defendant to reduce the allotment of each member of the Petitioner to a figure representing the proportionate share of each of said 1,084 Quechan Indians in the 45,000 acres available for distribution; in the alternative, said Acts authorized the

agents of the Defendant to allot 80 acre and 160 acre tracts within said Reservation to a fraction of the membership of the Petitioner, and the remainder of said Indians would then be entitled, without payment of any fee, to receive allotments in similar amounts, "upon and surveyed or unsurveyed lands of the United States not otherwise appropriated," including the territory surrounding the Reservation. Under the aforementioned statutes, the members of the Petitioner also were entitled to receive trust patents upon allotment and to receive patents in fee "free of all charge or incumbrance whatsoever" twenty-five years after the date of allotment.

13. Notwithstanding the foregoing, the Defendant, on December 4, 1893, entered into an alleged "agreement with the principal men and other male adults of the Yuma Indians in the State of California," (hereinafter referred to as the "Agreement of 1893," a true and correct copy of which is annexed hereto as Exhibit B). Upon information and belief, the Defendant never advised the Petitioner of its rights under the aforementioned General Allotment Acts, or that Petitioner was the owner of all lands in said Reservation, but, on the contrary, agents of the Defendant, taking advantage of the ignorance of the Quechan Indians, used their positions of guardianship and control to persuade the Petitioner to surrender, without compensation, the greater part of the Reservation to which it was lawfully entitled. In order to accomplish this purpose, agents of the Defendant threatened the members of the Petitioner that, unless they agreed to accept 5 acres of irrigable land per person and to relinquish the remainder of the Reservation, they would be entirely deprived of their lands. The agents of the Defendant

carried out this threat by striking from the rolls of the Quechan Tribe numerous individuals who refused to sign said agreement.

14. The irrigable lands contained within said Reservation were valuable and desirable for agricultural purposes. The non-irrigable lands contained in said Reservation included valuable deposits of sand and gravel, areas important for right of way purposes, lands along the riverbank which had the prospect of accretion, and were otherwise of value.

15. Said agreement of 1893 was wholly nugatory since (a) no consideration whatsoever was received by the Petitioner from the Defendant for the surrender of the greater portion of said Reservation, inasmuch as the amounts of land promised to the members of the Petitioner upon allotment were substantially smaller in size than the tracts to which said Indians would have been entitled under the General Allotment Acts if they had made no agreement at all, and for the further reason that all of the land in said Reservation was owned by Petitioner, and that no conveyance or allotment thereof by the Defendant could furnish consideration to the Petitioner; and (b) the signatures of most of all of the signers of said Agreement were either (1) forged, or (2) coerced by force or the threat of physical violence, including the imprisonment of one of the principal opponents of the measure, or (3) coerced under the threat of deprivation of land rights, or (4) secured by misrepresentation as to the effect of the Agreement and also concealment by the agents of the Defendant of the fact that without any agreement any allotments made to the members of the Petitioner would have been

in substantially larger amounts than said Agreement provided.

16. Said Agreement of 1893 was further nugatory because, at all times during the negotiation and conclusion thereof, the following conditions existed: (a) the agents of the Defendant misled the Quechan Indians into believing that they would have free water for their lands in perpetuity, and otherwise failed or refused to inform or misled the Petitioner as to the meaning of the provisions of the Agreement; (b) the interpreter for the Indians was an employee of the agents of the Defendant and was incompetent to explain the proceedings to the Petitioner; (c) the members of the Petitioner were ignorant of the English language and said Agreement contained words for which no comparable term or concept existed in the Quechan tongue; and (d) the members of the Petitioner, although unfamiliar with the economy of the white man, were not advised or assisted by counsel in their dealings with the Defendant, and no legal or other disinterested advice was made available to them.

17. After negotiating the alleged Agreement of 1893, the Defendant unilaterally altered said Agreement in material respects by the Act of August 15, 1894 (28 Stat. 286, 332). In said amendments, Congress ordered the expenses of survey and sale of certain lands to be deducted from funds due the Petitioner, and granted a right of way across the Reservation to the Southern Pacific Railroad Company in accordance with prior grants under the Acts of July 27, 1866 (14 Stat. 292, 299), and March 3, 1871 (16 Stat. 573, 579). These changes were never submitted to the Petitioner for its

approval, and no compensation was paid to the Petitioner therefor.

18. By the Act of April 21, 1904 (33 Stat. 189, 224), as amended by the Act of March 3, 1911 (36 Stat. 1058, 1063), the Defendant again altered the Agreement of 1893. In such legislation, the Defendant declared irrigable lands within the Reservation reclaimed by the diversion of the Colorado River to be within the public domain. This legislation also increased the allotments of members of the Petitioner to ten acres of irrigable land, but provided that the cost of irrigation be reimbursed to the Defendant from any funds received upon the sale of the surplus lands of the Reservation or from any other fund which might become available for such purpose, and provided that unpaid costs of the irrigation project be held to constitute a first lien on such allotments upon issuance of a patent in fee. These stipulations were enacted without the consent of the Petitioner, without compensation to the Petitioner, and in violation not only of the guarantee of the aforementioned General Allotment Acts, but also of said Agreement of 1893, pledging that patents in fee "free of al incumbrance whatsoever" wold be issued to the allotees twenty-five years after the date of allotment.

19. The aforementioned conduct of the Defendant constituted a taking of lands belonging to the Petitioner without payment of just compensation, in violation of the Fifth Amendment to the Constitution, for which recovery is authorized under Section 2(1) and Section 2(4) of the Act.

20. In determining the amount of recovery to which the Petitioner may be entitled hereunder, and by reason of the causes of action herein set forth, the Peti-

tioner should be allowed interest or else there should be given effect to the fact that subsequent to the occurrence of the events which are the subject of this petition, there has been a substantial decrease in the value of the dollar and in its purchasing power, so that the present dollar is not, as a measure of value, the equivalent of the then dollar, and therefore, an appropriate adjustment increasing the amount of recovery should be made in respect thereof.

As and for a Second and Alternative Cause of Action

21. For a second and alternative cause of action, the Petitioner realleges each and every allegation contained in Paragraphs 1 through 18 inclusive, and also in Paragraph 20, and makes them a part hereof.

22. The aforementioned conduct of the Defendant constituted an appropriation of lands belonging to the Petitioner for an unconscionable consideration and under conditions of fraud and duress, for which recovery is authorized under Section 2(3) of the Act.

As and for a Third and Alternative Cause of Action

23. For a third and alternative cause of action, the Petitioner realleges each and every allegation contained in Paragraphs 1 through 18 inclusive, and also in Paragraph 20, and makes them a part hereof.

24. Under the facts and circumstances so set forth, standards of fair and honorable dealings required that, in addition to performing other duties, the Defendant (1) protect the Petitioner in the use and possession of its property; (2) advise the Petitioner specifically and promptly of its rights under the General Allotment

Acts; (3) safeguard the Petitioner from imposition in its dealings with the United States (4) refuse to sacrifice the interests of the Petitioner for the benefit of the Defendant and non-Indian citizens thereof; (5) refrain from unilaterally altering its obligations to the Petitioner; and (6) account to the Petitioner for the profits realized or the benefits obtained by the Defendant upon disposition of the lands and other property here involved.

25. The aforementioned acts and omissions of the Defendant were contrary to its moral obligations to protect the Petitioner and in violation of standards of fair and honorable dealings, for which recovery is authorized under Section 2(5) of the Act.

As and for a Fourth and Separate Cause of Action

26. For a fourth and separate cause of action, the Petitioner realleges each and every allegation contained in Paragraphs 1 through 18 inclusive, and also in Paragraph 20, and makes them a part hereof.

27. After the establishment of the 1884 Quechan Reservation, but prior to August 15, 1894, the Defendant, without the consent of, or payment of any consideration to, the Petitioner, granted rights of way across said Reservation to the Yuma Pumping Irrigation Company by virtue of the Act of January 20, 1893 (27 Stat. 420), and to the Colorado River Irrigation Company by virtue of the Act of February 15, 1893 (28 Stat. 456), and otherwise appropriated lands within said Reservation pursuant to statutes largely unknown to the Petitioner but well-known to the Defendant.

28. The foregoing acts of the Defendant constituted a taking of the Petitioner's lands for public use without payment of just compensation agreed to by the Petitioner, in violation of the Fifth Amendment to the Constitution, by reason whereof the Petitioner is entitled to recovery under Section 2(1) and Section 2(4) of the Act.

Prayer

WHEREFORE, The Petitioner prays:

A. For a determination that the Defendant be required to make a full and true discovery and disclosure of all land and other property within the 1884 Reservation owned by the Petitioner and taken by the Defendant for public use, and for a determination that said land and property was wrongfully taken by the Defendant;

B. For a determination that the Defendant be required to make a full and true discovery and disclosure of all land and other property within the 1884 Reservation owned by the Petitioner and otherwise acquired by the Defendant, and for a determination that said land and property was wrongfully acquired by the Defendant;

C. For a determination that the Defendant is obligated to compensate the Petitioner for the land and other property wrongfully appropriated as aforesaid;

D. For a determination of the just compensation therefor;

E. That judgment be entered in favor of the Petitioner for the amount so determined, with appropriate

adjustments for the decline in the value of the dollar and for the reasonable use value of the land from the time of its loss, with interest to the date of the payment of the judgment;

F. That the Petitioner have such other and further relief as to this Commission may appear just and equitable.

Respectfully submitted,

NICHOLAS CONOVER ENGLISH,
Attorney of Record for the Quechan Tribe of the Fort Yuma Reservation, California,
11 COMMERCE STREET,
NEWARK 2, NEW JERSEY

WILLIAMSON, HOGE & CURRY,
417 South Hill Street,
Los Angeles 13, California,
of Counsel.

MCCARTER, ENGLISH & STUDER,
11 Commerce Street,
Newark 2, New Jersey,
of Counsel.

APPENDIX C

BEFORE THE INDIAN CLAIMS COMMISSION

Docket No. 320

THE QUECHAN TRIBE OF THE
FORT YUMA RESERVATION, CALIFORNIA, PETITIONER

v.

THE UNITED STATES OF AMERICA, DEFENDANT

[Filed: June 24, 1958]

AMENDMENT TO PETITION FOR LOSS OF RESERVATION

Pursuant to order of the Commission dated April 24, 1958, the Petitioner files this amendment to its original petition, supplementing said petition by adding certain new, causes of action thereto as follows:

FIFTH, SEPARATE, AND ALTERNATIVE CAUSE OF ACTION

29. For a fifth, separate, and alternative cause of action the Petitioner realleges the allegations contained in Paragraphs 1 to 3, inclusive, and in Paragraphs 5 and 7, of its original petition on file herein and makes them a part hereof.

30. On or about December 4, 1893, the Defendant entered into an agreement with the Yuma Indians that

is to say, the Quechan Indians, represented by the Petitioner herein, which agreement was ratified by the Act of Congress of August 15, 1894 (28 Stat. 286, 332). Said agreement is sometimes hereinafter referred to as the "1893 Agreement". A true and correct copy of the 1893 Agreement is attached to the original petition on file herein and marked Exhibit B.

31. Petitioner is informed and believes, and upon that ground, alleges that the Defendant has defaulted in its obligations under the 1893 Agreement in the following regards:

(a) Defendant has failed: (1) to make allotments to such Quechan Indians as selected tracts of land at the cost of the United States; (2) to make allotments for such Quechan Indians as failed to make a selection within 60 days; and (3) to survey, subdivide and appraise all irrigable lands contained in the Reservation established by Executive Order dated January 9, 1884 and not thus allotted, and to sell such lands at public or private sale; all as provided by Article III of the 1893 Agreement.

(b) Defendant has failed to realize an adequate sale price for the aforesaid irrigable lands, and to credit Petitioner with the adequate sale price of such lands as Defendant undertook to do by Article IV of the 1893 Agreement.

(c) Defendant has failed to hold the aforementioned allotments in trust for 25 years for the benefit of the individual members of

Petitioner, to whom such allotments had been made, and to convey a patent in fee to the respective members of Petitioner, discharged o such trust and free of all encumbrances whatever, as Defendant undertook to do by Article V of the 1893 Agreement.

32. The details of such breaches of contract are not known to the Petitioner but are well known to the Defendant.

WHEREFORE, the Petitioner prays that, in addition to the relief prayed for in the original petition on file herein, the Defendant be required to make a full and true discovery and disclosure of all its transactions in carrying out the obligations which Defendant undertook by Articles III, IV and V of the 1893 Agreement; and that, if the Commission determines that the 1893 Agreement is a valid and binding agreement, the petitioner be allowed such damages for any breach or breaches thereof by the Defendant as the Commission may find to have occurred.

Respectfully submitted,

FULTON W. HOGE,

Attorney of Record for the
Quechan Tribe of the Fort Yuma
Reservation, California
4648 Melbourne Avenue
Los Angeles 27, California

HOGE, PERRY & PATTERSON
4648 Melbourne Avenue
Los Angeles 27, California
Of Counsel

LOUIS L. ROCHMES, ESQ.
711 Fourteenth Street, N. W.
Washington, 5, D. C.
Of Counsel

AFFIDAVIT OF SERVICE

STATE OF CALIFORNIA)
)ss.
COUNTY OF LOS ANGELES)

Louise Rousseau, being first duly sworn, deposes and says:

That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years; and that affiant's address is: 4042 Denny Avenue, North Hollywood, California; that on the *20th* day of June, 1958, affiant served the above and foregoing Amendment to Petition For Loss of Reservation by mailing four (4) copies of the same, postage prepaid, to:

The Attorney General
Attention: Ralph A. Barney, Esq.
United States Department of Justice
Washington, 25, D. C.

Subscribed and sworn to before
me this _____ day of June, 1958.

Notary Public in and for said
County and State

APPENDIX D

BEFORE THE INDIAN CLAIMS COMMISSION

Docket No. 320

THE QUECHAN TRIBE OF THE
FORT YUMA RESERVATION, CALIFORNIA, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

[Decided: July 21, 1971]

OPINION ON MOTION TO REOPEN THE RECORD AND TO VACATE ORDER STAYING FURTHER PROCEEDINGS

Kuykendall, Chairman, delivered the opinion of the Commission.

On April 29, 1963, the Commission issued an order closing the record in this case on proof of title. On November 25, 1970, the Commission issued an Order staying further proceedings pending the outcome of legislation then before Congress.[1] The proposed legislation was never enacted and has not been reintroduced.

[1] The proposed legislation sought the return of the property in issue in this case, to the Quechan Indians.

On April 21, 1971, the plaintiff filed a motion to reopen the record on liability and to vacate the order staying further proceedings. It appears that plaintiff's counsel at the time of the 1962 title hearing has since died. The plaintiff, through its present attorney, operating under an attorney contract dated February 10, 1971, and approved by the Secretary of the Interior, alleges in support of the motion to reopen that the original petition filed in 1951 charged that on December 4, 1893, the defendant and the plaintiff entered into an agreement whereby the plaintiff Indians agreed to accept allotments of their Executive order reservation lands in the amount of five acres of irrigable land per person and to relinquish the remainder of the reservation to the defendant. The petition further alleges that the 1893 Agreement was wholly nugatory, having been exacted without consideration, and under misrepresentation, duress and concealment of facts by the defendant; that the agreement presented to Congress was a forgery; and that the defendant further unilaterally and materially altered the 1893 Agreement by the Acts of August 15, 1894 (28 Stat. 286, 332), and April 21, 1904 (33 Stat. 189, 224), as amended by the Act of March 3, 1911 (36 Stat. 1058, 1063).

Pursuant to a Commission order of April 24, 1958, that certain causes of action in Docket No. 86 be stricken therefrom and included in Docket No. 320, the plaintiff's then attorney amended the petition in Docket No. 320 on June 24, 1958 to add a fifth cause of action premised on the 1893 Agreement being valid—alleging that it was ratified by the 1894 Act—and seeking damages for non-performance by the defendant. Plaintiff states that during the 1962 liability hearing the bulk of the evidence demonstrating the invalidity of the 1893

Agreement was not presented, and that during the oral argument plaintiff's former attorney abandoned the invalidity argument in favor or arguing for damages flowing from defendant's breaches of the 1893 Agreement.

Plaintiff now seeks to return to its original position, and contends that without a full presentation of evidence that the 1893 Agreement is invalid, plaintiff is left in the vulnerable position of having its assertions to the contrary sustained, resulting in the loss of its land "as the result of a wholly invalid agreement."

Plaintiff urges that this Commission declare the 1893 Agreement to be invalid and that plaintiff has retained title to its land. Plaintiff argues that authority for such action is contained in Section 2, Clause (3) of the Indian Claims Commission Act (25 U.S.C. §70a). We disagree. Section 2, Clause (3) of the Indian Claims Commission Act grants jurisdiction to the Commission to hear and determine "claims which would result if the treaties, contracts, and agreements between the claimant and the United States were revised on the ground of fraud, duress, unconscionable consideration, mutual or unilateral mistake, whether of law or fact, or any other ground cognizable by a court of equity." The Commission and the courts have disclaimed jurisdiction over the validity of treaties between Indian tribes and the United States. In *Sac and Fox Tribe* v. *United States*[2] the Commission held that the validity of a properly executed treaty is not open for ordinary judicial inquiry under any law or statute, or as regards the Commission

[2] Docket No. 83, 7 Ind. Cl. Comm. 675, 710-712 (1959), *aff'd on other grounds*, 161 Ct. Cl. 189, 198, *cert. denied*, 375 U.S. 921 (1963).

under the Indian Claims Commission Act, that ratification imparts legality to a treaty, and that Congress alone has authority to abrogate or invalidate a treaty in whole or in part. The case is in line with earlier precedents. See *United States* v. *Minnesota*, 270 U.S. 181, 201 (1926); *Lone Wolf* v. *Hitchcock*, 187 U.S. 553, 567-568 (1903); *Fellows* v. *Blacksmith*, 19 How. 366, 372 (1856). The rationale applies equally to the ratified 1893 Agreement. It follows that the Commission is without authority to determine that the 1893 Agreement is invalid, and at most can determine monetary damages for fraud, duress, unconscionable consideration, etc. It is clear that under the circumstance the declaratory relief which the plaintiff seeks through presenting additional evidence of the invalidity of the 1893 Agreement cannot be achieve in this forum.[3] However, although it would thus be futile to allow the plaintiff to produce additional evidence for the purpose sought in its pending motion, it is possible that the evidence would have some bearing on the amount of monetary damages, if any, recoverable.

In seeking to reopen the record it is incumbent upon the plaintiff not only to set out the evidence that it seeks to introduce, in order that the Commission may judge the sufficiency thereof, but to demonstrate that the evidence is material to the issue, is not merely cumulative, and that it is reasonably probable that a different result will be reached if the evidence is admitted. *Combs* v. *Peters*, 23 Wis. 2d 629, 127 N.W. 2d 750, 754 (1964); *Re Eanelli's Estate*, 260 Wis. 192, 68 N.W. 2d 791, 802, 803 (1955); *Crouse* v. *McVickar*, 207

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[3] *See United States* v. *King*, 395 U.S. 1. (1969), *rev'g King* v. *United States*, 182 Ct. Cl. 831, 390 F.2d 894 (1968).

N.Y. 213, 100 N.E. 697, 698 (1912). The plaintiff has not yet met its burden in this respect, but will be given an opportunity to describe the evidence it seeks to introduce, and to show its materiality, if any, in respect to monetary damages.

The defendant argues that the provisions of 25 U.S.C. § 70v, as amended on April 10, 1967, by §70v-1, specifying that the Commission calendar all claims for trial prior to December 31, 1970, leaves the Commission without jurisdiction to hear any case not calendared prior to that date. The contention is without merit. The Commission has fully complied with 25 U.S.C. §70v, as amended. It is within the discretion of the Commission to reopen the record of pending cases as warranted by the facts, in order that the purposes of the Indian Claims Commission Act, in equitably settling cases, not be thwarted.

The defendant further argues that the plaintiff's motion should be denied because the plaintiff has had ample opportunity to present all relevant evidence, and the parties' proposed findings explore in depth the circumstances surrounding the execution of the 1893 Agreement. Because of the peculiar circumstances of this case, including the alleged differences of language and culture between the parties allegedly resulting in lack of communication and understanding, and due to the death and replacement of plaintiff's counsel, it is our

opinion that the plaintiff should be offered an opportunity to present fully its case. An appropriate order will be issued.

Concurring: \s\ JEROME K. KUYKENDALL
JEROME K. KUYKENDALL,
Chairman

\s\ JOHN T. VANCE
JOHN T. VANCE, Commissioner

\s\ RICHARD W. YARBOROUGH
RICHARD W. YARBOROUGH, Commissioner

\s\ MARGARET H. PIERCE
MARGARET H. PIERCE, Commissioner

\s\ BRANTLEY BLUE
BRANTLEY BLUE, Commissioner

APPENDIX E

UNITED STATES CLAIMS COURT
TRIAL DIVISION

Docket No. 320

QUECHAN TRIBE OF THE FORT YUMA RESERVATION, CALIFORNIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

JOINT MEMORANDUM RE STIPULATIONS

PART I

The parties stipulate to the following facts:

1. Plaintiff (hereinafter "Quechan" or "Quechan Tribe") is a duly recognized Indian tribe functioning under the Indian Reorganization Act of 1934.

2. By executive order of President Chester A. Arthur on January 9, 1884, a tract of land in the State of California "beginning at a point in the middle of the channel of the Colorado River due east of the meander corner to sections 19 and 30, township 15 south, range 24 east, San Bernardino meridian; thence west on the line between sections 19 and 30 to the range line between townships 23 and 24 east; thence continuing west on the section line to a point which when surveyed, will be the corner to sections 22, 23, 26, and 27, in township 15 south, range 21 east; thence south on the line

between sections 26 and 27, in township 15 south, range 21 east, and continuing south on the section lines to the intersection of the international boundary, being the corner to fractional sections 34 and 35, in township 16 south, range 21 east; thence easterly on the international boundary to the middle of the channel of the Colorado River; thence up said river, in the middle of the channel thereof, to the place of beginning," was set apart as a reservation for the Quechan. Tracts within the reservation to which valid rights had previously attached were excluded from the reservation.

3. There was excluded from the foregoing description so much of the land as was embraced within the Fort Yuma Military Reservation, but that reservation was by the same order transferred to the control of the Department of the Interior to be used for Indian purposes in connection with the reservation. Thereafter at all times the Fort Yuma Military Reservation, both in California and Arizona, was and is a part of the Quechan Reservation.

4. According to the order of the Secretary of the Interior, dated December 20, 1978, and by Supplemental Determination and Directives of the Secretary of the Interior, dated January 30, 1981, the 1884 executive order boundary of the Fort Yuma Indian Reservation, as modified by the executive order of December 19, 1900, which revoked the portion of the reservation lying south of the Colorado River in the then territory of Arizona, still remains the reservation boundary.

5. According to the secretarial order the exterior boundaries of the Quechan Reservation today are the boundaries set forth in paragraph 1, established by the

1884 executive order, as modified by the executive order of December 19, 1900, and those lands which have accreted to the 1884 boundaries.

6. The secretarial order of December 20, 1978, has attached to it a map entitled "Fort Yuma Indian Reservation 1884-1974, Revised September 1974 SDT," depicting the general location of the reservation boundary. The order provides that the exact location of the boundary "shall be determined hereafter by survey in accordance with the boundaries recognized by this Order." The parties have been unable to locate a map setting forth the exact location of the boundary by survey pursuant to the 1978 order, but both parties will continue to search for that map. In the event that a more accurate map cannot be located, the parties will stipulate to the highway system map prepared by the Fort Yuma Indian Agency, California, as setting forth the 1884 boundaries and the accreted lands.

7. The reservation as established in 1884 consisted of 48,608 acres. As a result of subsequent changes in the channel of the Colorado River, approximately 5,000 acres were added to the reservation by accretion. After the 1893 agreement, the reservation was thought to comprise approximately 8,100 acres.

8. If the December 20, 1978, secretarial order is upheld, there are no remaining issues as to the liability of the United States for the acquisition of portions of the Quechan Reservation. The issues remaining in the case relate to the determination of the damages sustained by the Quechan.

9. If the December 20, 1978, secretarial order is upheld, the proper measure of damages for the portions

of the reservation which were permanently acquired from the Quechan is the fair market value of those portions of the reservation on the effective dates of the permanent acquisitions. No stipulation is entered into as to the measure of damages for the temporary deprivation of those lands which were reaffirmed by the executive order of December 20, 1978, or of those lands which, after a period of temporary deprivation, were permanently acquired.

10. The secretarial order of December 20, 1978, excluded from the recognition of the trust status of the lands within the 1884 exterior boundaries those lands as to which valid rights were acquired by third parties before or after 1884 and reclamation work projects constructed on the reservation pursuant to statutes after 1884. Those exceptions are described in detail in the secretarial Determination and Directives signed by Secretary Watt on January 30, 1981, and published in 46 Federal Register at page 11,372, et seq.

11. Both the United States and the Quechan Tribe were and are parties to the case of *Arizona v. California*, No. 8 Original, and participated in hearings before Elbert P. Tuttle, Special Master, appointed by the Supreme Court, in 1980 and 1981. The parties waive foundation for the introduction into evidence in this case of any portions of the transcript of the hearings before Special Master Tuttle and any exhibits which were introduced into evidence at the hearings before Special Master Tuttle, reserving their objections as to relevancy and materiality.

12. Plaintiff has furnished to defendant's attorney and defendant has furnished to plaintiff's attorney a copy of the exhibits relied upon and cited by the plaintiff's witness, Robert G. Hill, and defendant's witnesses, John T. Daubert and James G. Sawyers. Both parties waive foundations for the introduction into evidence of all those exhibits relied upon and cited by the named witnesses. Both parties reserve all objections as to relevancy and materiality.

13. All of the lands of the Quechan Reservation which lie below the All American Canal (the southern lands) were and are practicably irrigable, and for the purpose of determining damages in this action they shall be valued as irrigated lands.

PART II

14. In addition to the foregoing stipulations, the Quechan Tribe offers to stipulate that of the approximately 25,000 acres of reservation land lying north and west of the All American Canal (the northern lands), 6,199 acres were found to be practicably irrigable by Special Master Tuttle, and for the purpose of these hearings those 6,199 acres were and are practicably irrigable and shall be valued for damages as irrigated lands.

The United States refuses to stipulate as to these 6,199 acres of northern lands because the evidence appears to establish that the land could not be profitably irrigated.

15. The Quechan Tribe also offers to stipulate that as a result of the December 20, 1978, secretarial order there are no remaining issues as to the liability of the United States for the taking of portions of the Quechan Reservation. The issues remaining in the case relate to

the determination of the damages sustained by the Quechan.

The United States is unable to so stipulate because of the Supreme Court opinion in *Arizona v. California* that there must be a judicial determination of the Quechan boundary.

16. The Quechan Tribe also offers to stipulate that the proper measure of damages for the portions of the reservation which were permanently taken from the Quechan is the fair market value of those portions of the reservation on the effective dates of the permanent acquisitions. The measure of damages for the temporary deprivation of those lands which were reaffirmed by the executive order of December 20, 1978, and of those lands which, after a period of temporary deprivation, were permanently acquired, is their fair rental value.

The United States is unable to so stipulate for the reason set forth in paragraph 15 and also because, in any event, the United States contends that the measure of damages for a temporary deprivation is the rents actually received by the United States.

DATED: May 26, 1983,

Respectfully submitted,

RAYMOND C. SIMPSON and
KILPATRICK, CLAYTON, MEYER
& MADDEN, a professional corporation

By: \s\ B.J. KILPATRICK
B.J. KILPATRICK
Attorneys for plaintiff

CAROL E. DINKINS
ASSISTANT ATTORNEY GENERAL
RICHARD L. BEAL, ATTORNEY
Attorneys for the defendant

By: \s\ RICHARD L. BEAL
Attorney

APPENDIX F

IN THE UNITED STATES CLAIMS COURT

Docket No. 320

QUECHAN TRIBE OF THE FORT YUMA RESERVATION, CALIFORNIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

[Filed: Aug. 5, 1983]

STIPULATION FOR SETTLEMENT AND ENTRY OF FINAL JUDGMENT

The parties, by counsel, hereby stipulate that the above-entitled claim should be settled, compromised, and finally disposed of by entry of final judgment as follows:

1. There shall be entered in the action a net judgment, without offsets, for plaintiff in the amount of Fifteen Million Dollars ($15,000,000.00). Entry of final judgment shall finally dispose of all rights, claims, or demands which plaintiff has asserted or could have asserted with respect to the claims in Docket 320, and plaintiff shall be barred thereby from asserting any further rights, claims, or demands against the defendant and any future action on the claim encompassed on Docket 320, and shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims, or

offsets which defendant has asserted or could have asserted against plaintiff in Docket 320 and defendant shall be barred thereby from asserting against plaintiff in any future action any such rights, demands, payments on the claim, counterclaims, or offsets.

2. The final judgment entered pursuant to this stipulation shall be construed to be a compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument in any other case.

3. The final judgment of the United States Claims Court, pursuant to this stipulation, shall constitute a final determination by the court of the above-captioned case and shall become final on the day it is entered, all parties hereto waiving any and all rights to appeal from or otherwise seek review of such final determination.

4. Attached to this stipulation and incorporated by reference are: a resolution approving the settlement adopted by the Quechan Tribal Council, plaintiff's governing body, on June 16, 1983; a resolution adopted at a meeting of the adult members of the Quechan Tribe of Indians held at Yuma, Arizona, on July 8, 1983, and a further resolution ratifying the action of the members and reaffirming the approval of the settlement by the Quechan Tribal Council adopted July 8, 1983; all of said resolutions authorizing counsel for plaintiff to enter into this stipulation, as set forth herein; and a copy of the letter approving the settlement of this litigation by the

Department of the Interior or its authorized representative. (Exhibits 1-4).

DATED: July 12, 1983.

RAYMOND C. SIMPSON and
KILPATRICK, CLAYTON, MEYER
& MADDEN

By: \s\ RAYMOND C. SIMPSON
RAYMOND C. SIMPSON
Attorneys of Record for
Plaintiff

DATED: July 29, 1983.

F. HENRY HABICHT, II
RICHARD L. BEAL

By: \s\ RICHARD L. BEAL
RICHARD L. BEAL
Attorney for Defendant

EXHIBIT 1

[seal omitted]

QUECHAN INDIAN TRIBE
Fort Yuma Indian Reservation

P.O. Box 1352
YUMA, ARIZONA 85364
Phone (619) 572-0213

RESOLUTION

R-33-83

A Resolution of the Quechan Tribe authorizing Attorney Raymond C. Simpson to finalize a settlement of Quechan vs. United States Docket #320.

WHEREAS: The Quechan Tribal Council acknowledges an offer by the U.S. Attorney to settle Docket #320, and

WHEREAS: The Quechan Tribal Council realizes that the U.S. Attorney's first offer of $13,500,000.00 was not in the best interest of the tribe, and

WHEREAS: The Quechan Tribal Council has determined that the U.S. Attorney's final offer of $15,000,000.00 is a fair and reasonable amount for settlement, and

WHEREAS: The Quechan Tribal Council realizes that a previous action through Council Resolution R-24-83 authorized Attorney Raymond C. Simpson to negotiate settlement between $15,000,000.00 to $20,000,000.00.

SO THEREFORE BE IT RESOLVED: That the Quechan Tribal Council does hereby rescind Resolution R-24-83 and authorize final settlement of Docket #320 in the amount of $15,000,000.00, and

BE IT FINALLY RESOLVED: That the Quechan Tribal Council authorizes Attorney Raymond C. Simpson to finalize said settlement on behalf on the Quechan Tribe.

CERTIFICATION

The foregoing resolution was presented at a Regular Council meeting which convened on June 16, 1983, duly approved by a vote of 5 for, and 0 against, by the Tribal Council of the QUECHAN INDIAN TRIBE, pursuant to authority vested in it by Section 16 of the Indian Reorganization Act of June 15, 1934 (49 Stat. 378), and Article IV, Section 1(b), Section 15, and Article VIII, Section 1, of the Quechan Tribe Constitution and Bylaws. This resolution is effective as of the date of its approval.

QUECHAN INDIAN TRIBE

By:

/s/ VINCENT HARVIER
VINCENT HARVIER, President

/s/ PATRICIA E. QUAHLUPE
PATRICIA E. QUAHLUPE,
Secretary

APPROVED:

_____
Superintendent

Exhibit 2

[seal omitted]

QUECHAN INDIAN TRIBE
Fort Yuma Indian Reservation

P.O. Box 1352
YUMA, ARIZONA 85364
Phone (619) 572-0213

RESOLUTION

R-34-83

WHEREAS: The Quechan Tribe of Indians has been prosecuting a claim before the United States Claims Court entitled Quechan Tribe of Indians v. United States of America, Docket 320, and

WHEREAS: The above-entitled action was set for trial before the United States Claims Court on June 20, 1983, in San Diego, California, and

WHEREAS: A pre-trial in the action was held in Washington, D.C., on June 8, 1983, at which, among other things, the status of settlement negotiations was discussed, and

WHEREAS: With the approval of the Quechan Tribal Council settlement negotiations had been conducted for several months prior to June 8, 1983, between the attorneys for the Tribe and the attorneys representing the United States, and

WHEREAS: On April 20, 1983, the Quechan Tribal Council adopted resolution R-24-83 authorizing a settlement of the action for not less than Fifteen Million Dollars ($15,000,000.00), and

WHEREAS: On June 15, 1983, the attorneys forthe Quechan Tribe and the attorneys representing the United States agreed to a settlement of the claims in Docket 320 for a net amount of $15,000,000.00, and

WHEREAS: The Tribal Council of the Quechan Tribe of Indians fully debated and considered the proposed offer of settlement and approved the settlement by resolution adopted June 16, 1983, and

WHEREAS: Considerable time will be taken to hear and determine the issues in the case if litigated and appealed, and there will be considerable additional expense and further delays before a final judgment could be entered, and

WHEREAS: The Quechan Tribe of Indians held a general membership meeting of the Tribe on July 8, 1983, for the purpose of considering the terms of such settlement, and Raymond C. Simpson, Attorney, appeared before the general membership meeting and fully explained and evaluated the proposed compromise and settlement and answered questions of members of the Tribe, and,

in addition, members of the Tribal Council explained the settlement, and

WHEREAS: Representatives of the Department of Interior, Bureau of Indian Affairs, were present during the meeting and observed proceedings, and

WHEREAS: The adult members of the Quechan Tribe of Indians are fully informed and advised about the proposed settlement.

NOW, THEREFORE, BE IT RESOLVED, by the adult members of the Quechan Tribe of Indians assembled that the proposed settlement of the claims of the Tribe in Docket 320 for the net sum of $15,000,000.00, without offsets, be and hereby is approved, it being understood that this approval authorizes the attorneys to execute the proposed stipulation for entry of final judgment, and

BE IT FURTHER RESOLVED, that the President and Secretary of this meeting are authorized to execute the proposed stipulation and that the members of the Tribal Council are authorized to appear and testify before the United States Claim Court about the proposed settlement and the action taken by the adult members of the Quechan Tribe of Indians, and

BE IT FURTHER RESOLVED, that the Secretary of the Interior and the United States Claims Court are hereby requested to approve the proposed settlement and stipulation for entry of final judgment.

/s/ VINCENT HARVIER
VINCENT HARVIER,
President

ATTEST:

/s/ PATRICIA QUAHLUPE
PATRICIA QUAHLUPE
Secretary

CERTIFICATION

I hereby certify that at a duly called meeting of the adult members of the Quechan Tribe of Indians held July 8, 1983, notice of which was mailed to each member of the Tribe and published, the foregoing resolution was adopted by a vote of 53 for a 2 opposed, with 4 abstentions.

DATED: July 8, 1983.

/s/ VINCENT HARVIER
VINCENT HARVIER
President

ATTEST:

/s/ PATRICIA QUAHLUPE
PATRICIA QUAHLUPE
Secretary

I hereby certify that VINCENT HARVIER and PATRICIA QUAHLUPE, personally known to me, subscribed their names to the foregoing resolution in my presence and that the resolution was adopted by a vote of 53 for and 2 opposed and 4 abstained.

DATED: July 8, 1983.

/s/ signature illegible
Supt.
Representative, Bureau of Indian
Affairs, U.S. Department of the Interior

Exhibit 3

QUECHAN TRIBE OF INDIANS

RESOLUTION OF THE TRIBAL COUNCIL

RESOLUTION NO. R-35-83

WHEREAS, on June 16, 1983, the Quechan Tribal Council authorized attorneys for the Tribe to propose to the Attorney General of the United States that the Tribe accept the sum of Fifteen Million Dollars ($15,000,000.00) without offsets in full settlement of the claims of the Tribe, in Docket 320 before the United States Claims Court, subject to tribal approval and to the customary conditions of the United States for settlement of claim cases, and

WHEREAS, on July 8, 1983, the Attorney General of the United States approved the settlement under customary conditions, and

WHEREAS, on July 8, 1983, the Quechan Tribe of Indians had a general membership meeting pursuant to proper notice, for the purpose of considering and voting on the terms of the settlement, which was fully discussed by the members of the Tribe and by the attorneys representing the Tribe before the United States Claims Court, and

WHEREAS, the adult members of the Quechan Tribe of Indians were fully informed and advised about the proposed settlement and were fully advised as to the proposed stipulation for entry of final judgment, and

WHEREAS, the adult members of the Quechan Tribe of Indian adopted a resolution approving the compromise and settlement by a vote of 53 for and 2 opposed, with 4 abstentions, and

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council of the Quechan Tribe of Indians that the proposed compromise and settlement of the claims of the Tribe in Docket 320 by and hereby is affirmed, approved, and ratified and the proposed stipulation for final entry of judgment by and hereby is approved.

BE IT FURTHER RESOLVED: The following individuals be and hereby are authorized to testify before the United States Claims Court regarding the proposed settlement and the action taken by the adult members of the Quechan Tribe of Indians:

Vincent Harvier, President

Vernon Smith, Vice President

Joe Jackson

George Bryant

John Norton

BE IT FURTHER RESOLVED That the attorneys for the Tribe are authorized to execute the proposed stipulation for entry of final judgment and to take whatever steps are necessary to effectuate the compromise and settlement.

/s/ VINCENT HARVIER
VINCENT HARVIER,
President

ATTEST:

/s/ PATRICIA QUAHLUPE
PATRICIA QUAHLUPE
Secretary

The foregoing resolution was adopted by the Tribal Council of the Quechan Tribe of Indians on the 8th day of July, 1983, by a vote of 4 for and none opposed at a duly called meeting at which a quorum of the Tribal Council members were present.

/s/ VINCENT HARVIER
VINCENT HARVIER,
President

ATTEST:

/s/ PATRICIA QUAHLUPE
PATRICIA QUAHLUPE
Secretary

Exhibit 4

[seal omitted]

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Tribal Government Services (AD)

[Filed: JULY 27 1983]

Raymond C. Simpson, Esquire
2032 Via Visalia
Palos Verdes Estates, California 90274

Dear Mr. Simpson:

By letter dated July 11 you requested consideration and approval of a proposal compromise to settle the claims of the Quechan Tribe of Indians in Docket No. 320 for a net final judgment of $15,000,000. This case involves claims of the Quechan Tribe for damages for the taking of parts of their reservation after 1893 and the loss of use of other parts of the reservation from 1893 to 1978.

The claims in Docket No. 320 are being prosecuted by you under contract No. H50C14207367. This contract was made on February 10, 1971, and duly approved by the Phoenix Area Director. The term of the contract is effective through April 10, 1985.

Pursuant to authority granted to you by the Quechan Tribal Council, you submitted a letter to the Department of Justice offering to settle the claims in Docket No. 320 for $15,000,000. Your offer was accepted by the Acting Assistant Attorney General by letter dated July

8, 1983, with conditions. Among the conditions were that the proposed settlement be approved by appropriate resolutions of the governing body and the general membership of the tribe. In addition, approval of the settlement as well as the resolutions of the tribe must be secured from the Secretary of the Interior or his authorized representative.

Entry of judgment in this case shall finally dispose of all claims which the tribe has asserted or which the tribe could have asserted against the defendant under the Indian Claims Commission Act in Docket No. 320.

For purposes of obtaining consideration and approval of the settlement from the general membership of the tribe, a claims settlement meeting was scheduled and held on July 8, 1983, at the Quechan Tribal Office. Prior to the meeting, notices were posted throughout the reservation and mailed to the tribal members.

QUECHAN GENERAL MEMBERSHIP MEETING

On July 8, 1983, the general membership claims settlement meeting was convened at 2:15 p.m. by Vincent Harvier, President, Quechan Tribal Council. Approximately 70 people were in attendance. President Harvier explained to the tribal members the extensive involvement the tribal council has had in the settlement negotiations and his observations of what transpired at a hearing on these claims held the previous month before the United States Claims Court. After some discussion and comments by the tribal council members, you were asked to give your presentation. You gave a thorough and concise description of the history of the claims and explained the terms of the proposed settlement. Afterwards, Mr. George

Bryant, a tribal member, translated the written summary of your explanation into the Quechan language. Those present were then given an opportunity to comment on and ask any questions they may have concerning the settlement. The Bureau observers report that those present at the meeting appeared to understand the nature of the claims and the terms of the proposed settlement.

After some discussion of the settlement, President Harvier read the proposed general membership resolution accepting the terms of the settlement. A motion was made and seconded to adopt the resolution. Quechen General Membership Resolution No. R-34-83 was adopted by a vote of 53 for and 2 opposed, with 4 abstentions.

We are satisfied that appropriate steps were taken to publicize the Quechan general meeting held on July 8, 1983, so as to afford the tribal members an opportunity to attend the meeting and to consider and vote on the proposed settlement. The general meeting was properly conducted and the votes of the tribal members were fairly taken and reflected the views of the persons who voted. Quechan General Membership Resolution No. R-34-83 is hereby approved.

QUECHAN TRIBAL COUNCIL MEETING

After the general membership meeting, a duly called tribal council meeting was held for the purpose of considering and voting on the proposed settlement. A quorum of the council was present. The Quechan Tribal Council adopted Resolution No. R-35-83 approving the proposed settlement by a vote of 4 for and none opposed.

The Quechan Tribe is organized under a constitution and bylaws adopted pursuant to the Indian Reorganization Act. The constitution provides that the Quechan Tribal Council shall represent the Quechan Tribe in all affairs and shall have the power to present and prosecute any claims or demands of the tribe.

Resolution No. R-35-83, enacted on July 8, 1983, by the Quechan Tribal Council constitutes the action of the governing body of the tribe and is hereby approved.

The information furnished to us by you, our field officers, and information from other sources has satisfied us that the proposed settlement of the claims in Docket No. 320 is fair and just. The proposed settlement is hereby approved.

Sincerely,

/s/ signature illegible

Acting Deputy Assistant Secretary -
Indian Affairs (Operations)

APPENDIX G

IN THE UNITED STATES CLAIMS COURT

TRIAL DIVISION

DOCKET 320

QUECHAN TRIBE OF THE
FORT YUMA RESERVATION, CALIFORNIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

JOINT MOTION FOR APPROVAL OF SETTLEMENT AND ENTRY OF FINAL JUDGMENT

The parties, by counsel, hereby jointly move the court for an order approving a compromise and settlement of the above-entitled action and entering a final judgment in the sum of $15 million. The terms of the settlement are set forth in a stipulation entered into by the parties, which is filed herewith and which sets forth the terms of the settlement as follows:

1. There shall be entered in the action a net judgment, without offsets, for plaintiff in the amount of $15 million. Entry of final judgment shall finally dispose of all rights, claims, or demands which plaintiff has asserted or could have asserted with respect to the claims in docket 320, and plaintiff shall be barred thereby from

asserting any further rights, claims, or demands against the defendant and future action on the claims encompassed in docket 320, and shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims, or offsets which defendant has asserted or could have asserted against plaintiff in docket 320, and defendant shall be barred thereby from asserting against plaintiff in any future action any such rights, demands, payments on the claim, counterclaims, or offsets.

2. The final judgment shall be construed to be a compromise and settlement and shall not be construed as an admission by either party for the purpose of precedent or argument in any other case.

3. The final judgment shall constitute a final determination of the action, to become final on the date it is entered, all parties waiving any and all rights to appeal from or otherwise seek review of the judgment.

4. Attached to the stipulation and incorporated herein by reference are: a resolution approving the settlement adopted by the Quechan Tribal Council, plaintiff's governing body, on June 16, 1983; a resolution adopted at a meeting of the adult members of the Quechan Tribe of Indians held at Yuma, Arizona, on July 8, 1983; and a further resolution ratifying the action of the members and reaffirming the approval of the settlement by the Quechan Tribal Council adopted July 8, 1983; all of said resolutions authorizing counsel for plaintiff to enter into the stipulation, and a copy of the letter approving the settlement of the litigation by the Department of the Interior or its authorized representative.

DATED: July 27, 1983.

RAYMOND C. SIMPSON and
KILPATRICK, CLAYTON, MEYER
& MADDEN, a profession corporation

By: \s\ RAYMOND C. SIMPSON
RAYMOND C. SIMPSON
Attorneys for plaintiff

F. HENRY HABICHT II
Assistant Attorney General
RICHARD L. BEAL, Attorney

By: \s\ RICHARD L. BEAL
RICHARD L. BEAL
Attorneys for defendant

By: F. HENRY HABICHT, II
Acting Assistant Attorney General
Land and Nautrual Resources Division

APPENDIX H

IN THE UNITED STATES CLAIMS COURT

TRIAL DIVISION

DOCKET 320

QUECHAN TRIBE OF THE
FORT YUMA RESERVATION, CALIFORNIA, PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

FINAL JUDGMENT

A joint motion having been filed herein by the parties for approval of compromise settlement and entry of final judgment, pursuant to a written stipulation therefor filed with the motion, the court, being fully advised, concludes as a matter of law that the proposed settlement of plaintiff's claim is equitable and just to both parties and that final judgment should be entered in accordance with the stipulation. The court, therefore, approves that stipulation and renders judgment as follows:

Judgment is rendered for plaintiff in the amount of $15 million.

Entry of this final judgment shall finally dispose of all rights, claims, or demands which plaintiff has asserted

or could have asserted with respect to the claims in Docket 320, and plaintiff shall be barred thereby from asserting any further rights, claims, or demands against the defendant and any future action on the claims encompassed on Docket 320, and shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims, or offsets which defendant has asserted or could have asserted against plaintiff in Docket 320 and defendant shall be barred thereby from asserting against plaintiff in any future action any such rights, demands, payments on the claim, counterclaims, or offsets.

This final judgment is based on a compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument in any other case.

This final judgment is a final determination by the court of the above-captioned case and shall become final on the date it is entered, all parties having waived in open court any and all rights to appeal from or otherwise seek review hereof.

DATED: August 11, 1983.

ALEX KOZINSKI

Chief Judge